



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

California State Office  
2800 Cottage Way, Suite W-1834  
Sacramento, CA 95825  
www.ca.blm.gov



June 22, 1999

In Reply Refer To:  
1278 (P)  
CA-944

EMS TRANSMISSION: 6/23/99  
Information Bulletin **No. CA-99-68**

To: AFO's, - Attention: FOIA Coordinators  
  
From: DSD, Support Services  
  
Subject: Review of "Draft" - California FOIA Desk Guide

**DD: 07/20/99**

Attached is the "Draft" Freedom of Information Act, (FOIA) Desk Guide for your review. This Guide was prepared at the request of the FOIA Coordinators within the State. The Guide is meant to include current instructions, regulations, information and guidance consolidated from various sources.

The Guide is to be used as a quick and easy source of reference to assist you with your FOIA responses, to the public. This is your opportunity to review the Guide and ensure the information you need to do your job has been included.

Responses to this directive are to be forwarded by E-Mail to Louise Tichy, State Records Manager by July 20, 1999. If you have additional information which you currently are using that you believe would be helpful to all, and would like to have included in the guide, please include this in your response. If there are references in the draft which you feel are not significant or needed, Louise will need to know this also. All responses will be reviewed by Louise and the State FOIA Coordinator, Larry Weitzel.

Note: No electronic copy is available of the Department FOIA Handbook, which is listed as an Appendix to this Guide. If you do not have a copy of the Handbook and feel it necessary in order to complete your review, please contact Cheryle Meyer, State Office Support Services Staff Assistant thru E-Mail or at (916) 978-4506, and a hard copy will be forward to you.

**Signed**  
**Andy M. Smith**  
**Acting DSD, Support Services**

**Authenticated**  
**AJ Ajitsingh**  
**Records Management**

1 - Attachment:  
CA FOIA Desk Guide (134 pp)

Distribution:  
Larry Weitzel, CA-941  
Mary Lou West, CA-912

***draft***

**CALIFORNIA**

**FOIA**

**DESK GUIDE**

# CA FOIA Desk Guide

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## **INTRODUCTION TO THE FREEDOM OF INFORMATION ACT (FOIA)**

“The Freedom of Information Act (FOIA) is meant to ensure that the public has access to information that is maintained by the government. FOIA also recognized that the government must safeguard certain information that falls under one of the nine FOIA exemptions. Some of the requirements of the Electronic FOIA Amendments of 1996 ensure access to government information maintained in all formats (e.g. E-mail, back-up tapes), and makes more information available to the public electronically.”

## **FREEDOM OF INFORMATION ACT, 5 USC 552**

### **SECTION IV(A): FOIA/LEGISLATIVE HISTORY/OVERVIEW**

#### **HISTORY OF FOIA**

The Freedom of Information Act (FOIA) establishes a presumption that records in the possession of agencies and departments of the Executive Branch of the United States Government are accessible to the people. This was not always the approach to Federal information disclosure policy. Before enactment of the FOIA in 1966, the burden was on the individual to establish a right to examine these Government records. There were no statutory guidelines or procedures to help a person seeking information. There were no judicial remedies for those denied access.

The FOIA evolved after a decade of debate among agency officials., legislators, and public interest group representatives. It revised the public disclosure section of the Administrative Procedure Act.

With the passage of the FOIA, the burden of proof shifted from the individual to the Government. The “need to know” standard has been replaced by a “right to know”. The Government now has to justify the need for secrecy. Amendments were made to the FOIA in 1974, 1976 and 1986, because of the broad interpretations the agencies were giving in areas as fees, time delays, and administrative details. Requirements such as the listing of records withheld, withholding only portions of the records withheld, National defense and investigatory files were also included in the requirements.

Because Sec. 552(a)(6) provides appeal rights to the FOIA requester denied access to records or parts of records, hundreds of decisions by the courts have been made since 1966 which have further clarified the FOIA process, and interpreted terms within the law.

The FOIA covers all records under the custody and control of Federal Executive Branch agencies. It does not apply to Congress or the courts, nor does it apply to records of state or local governments. Nearly all state governments have their own FOIA-type statutes.

The Department of Justice is the agency responsible for coordinating administration of the FOIA and encouraging agency compliance.

## **FOIA/PRIVACY ACT CONTACTS**

DOI FOIA/PA Officer . . . . . Alexandra Mallus . . . . . (202)208-5342

Bureau FOIA/PA Officer                      Marilyn Legnini . . . . . (202) 452-5013  
WO 520

CA FOIA Officer . . . . . Tony Staed . . . . . (916) 978-4611  
DSD, External Affairs

CA FOIA Coordinator/ . . . . . Larry Weitzel . . . . . (916) 978-4409  
Privacy Act Officer . . . . . Records Administrator . . . . . FAX (916) 978-4416

CA FOIA (Electronic) . . . . . Mary Lou West . . . . . (916) 978-4412  
External Affairs

CDD FOIA Coordinator . . . . . Doran Sanchez . . . . . (909) 697-5220  
Public Affairs Specialist . . . . . FAX (909)697-5296

### **DOJ WEB SITE**

<http://www.usdoj.gov/oip/oip.html>

### **DOI FOIA HOMEPAGE**

<http://www.doi.gov/foia/>

### **FOIA WEB SITE**

[http://web.blm.gov/internal/wo-500/wo-520/Info\\_Access/info\\_access.html](http://web.blm.gov/internal/wo-500/wo-520/Info_Access/info_access.html)  
Information Access Policy (FOIA and Privacy Act)

### **EFOIA HOMEPAGE**

<http://www.blm.gov/nhp/efoia/>

## CALIFORNIA FOIA COORDINATORS

May 1999

OFFICE	COORDINATOR	PHONE NUMBER	FAX NUMBER
State Office	Larry Weitzel	916-978-4409	916-978-4416
Bakersfield	Larry Mercer	805-391-6010	805-391-6040
Bishop	Steve Addington	760-872-4881	760-872-2894
Folsom	Deane Swickard	916-985-4474	916-985-3259
Hollister	Bob Beehler	408-630-5000	408-630-5055
CA Desert District	Doran Sanchez	909-697-5220	909-697-5296
Ridgecrest	Loretta Pedersen	760-384-5414	760-384-5499
Palm Spr.-So. Coast	Rosemary Rusk	760-251-4805	760-251-4899
El Centro	Rita Smelser	760-337-4400	760-337-4490
Barstow	Bessie Hayes	760-252-6010	760-252-6098
Needles	Elaine Downing	760-326-7005	760-326-7099
Alturas	Adele Enderlein	530-233-4666	530-233-5696
Arcata	Linda Roush	760-825-2300	760-825-2301
Clear Lake	Dave Fatch	707-468-4053	707-468-4027
Eagle Lake	Jeff Fontana / Linda Hansen	530-257-0456	530-257-4831
Redding	Frank Velarde	530-224-2100	530-224-2172
Surprise	Susan Stokke	530-279-6101	530-279-2171

**FREEDOM OF INFORMATION ACT/PRIVACY ACT  
REGULATIONS AND GUIDANCE**

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**FEDERAL REGULATIONS**

5 U.S.C. 552	Public information; agency rules
43 CFR Part 2, Subpart A&B	DOI FOIA Regulations
43 CFR Part 2, Subpart D	DOI Privacy Act Regulations

**DEPARTMENT OF JUSTICE**

Annual FOIA Guide and Privacy Act Overview (Mailed annually to each Field Office)

**DEPARTMENT OF THE INTERIOR**

383 DM 15	DOI Guidance on the FOIA
383 DM 1-14	DOI Guidance on the Privacy Act

**BLM WASHINGTON**

BLM Manual 1220.11C	Agency Records Under FOIA
BLM Manual 1278	<b>External Access</b> to BLM Information
BLM Manual 1203, App.1	1278 - <b>Authority to Sign</b> Freedom of Information Act (FOIA) Responses
WO IB 97-121	Supreme Court Decision on <b>BLM Mailing List Case</b>
WO IM 94-207	Policy for <b>Types of Agreements</b> to Share, Exchange or Purchase Data
WO IM 95-161	Memorandum of Understanding with Interagency Groups to Identify FOIA and Records Management Activities
WO IM 95-164	Confidential Handling of <b>Oil and Gas Informal Expressions of Interest</b> Filed Under 43 CFR 3120.1(e) by the Public Requesting Lands to be Offered for Competitive Lease Sale
WO IM 96-060	<b>Processing of Temporary Directives and Posting on the Internet</b> Internal BLM Home Pages
WO IM 96-060, Chg. 1	Clarification of <b>Review and Processing of Temporary Directives</b> and Posting on the Internet Internal BLM Home Pages



## REGULATIONS AND GUIDANCE

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WO IM 96-060, Chg. 2	Further <b>Clarification of Review and Processing of Temporary Directives</b> and Posting on the Internet Internal BLM Home Pages
WO IM 96-114	Secretarial <b>Review of Mineral Patents</b> Pursuant to Secretarial Order 3163 and Bureau Instruction Memorandum 93-266
WO IM 96-175	Handling Requests for Paleontological Locality Information
WO IM 97-021	Processing Requests for Radio Frequency Assignment Information Regarding Endangered Species Locations and Law Enforcement
WO IM 97-031	Withholding Contractor Proposals Under Exemption 3 of the FOIA
WO IM 97-039	Records Required Electronically Under P.L. 104-231
WO IM 97-046	Implementation of the Freedom of Information Amendments of 1996
WO IM 97-094	Interim Guidance - Records Access Categories List
WO IM 97-109	New Procedures for Evaluating Comment Letters Submitted on Proposed Agency Initiatives/Respondents Personal Privacy Interests
WO IM 97-138	Providing Portions of Purchase Cardholders Lists Pursuant to the FOIA Frequently Requested Records
WO IM 97-182	Safeguarding of Bureau Electronic Privacy Act Records and Privacy Act Access Restriction Notices
WO IM 97-183	Making Records Available Via the BLM Electronic Reading Room HOMEPAGE Requirements by the 1996 FOIA Amendments
WO IM 98-067	Interim Guidance: Cost Recovery Rates for Public Purchase of Automated Land and Mineral Records System Reports and Data
WO IM 99-063	Cost Recovery Fee Schedule for Public
WO IM 99-112	Solicitor's Memorandum on Openness and Confidentiality: A Primer on Privileges

## REGULATIONS AND GUIDANCE

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DW IB 95-4077	Records Administration Guidance for Information Stored and Transmitted Electronically
DW IM 96-4028	Requests for Listings of Bureau <b>Electronic Mail Addresses</b>
IRM Bulletin 96-04	Processing FOIA Requests for <b>Personal and Personnel-Related Information</b>
Special Guidance	<b>FOIA Exemption Check List</b>

### CALIFORNIA STATE OFFICE

CA IB 97-002	Applicability of Freedom of Information Act (FOIA) to <b>Electronic Mail Messages</b> (E-mail)
CA IM 97-044	FOIA Policy and Procedures/ <b>Delegation of Authority</b>
CA IM 97-051	Procedures for <b>Processing FOIA Requests</b>
Special Guidance	Checklist for Preparing a FOIA Response

### NATIONAL TRAINING CENTER

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## MEMORANDUM

Wednesday, February 10, 1999 1:22 pm

To: BLM - FOIA/RA

From: Marilyn Legnini

Subject: **Agency Records Under the FOIA**

The Department FOIA Appeals Officer is concerned about a recent FOIA-Appeal made because a BLM office erroneously denied a request for an electronic message because the office did not consider the electronic form of the message an "official agency record". The BLM office cited in its response to the FOIA requester the 36 CFR 1222.12 and 44 USC 3301 (not the FOIA statute or regs).

Please remember that the definition of "record" that is subject to a FOIA request is different than that defined in the Federal Records Act.

The definition of "record" under the new FOIA is revised to include information in electronic formats (see 5 USC 552(f)(2) & Attachment 2-5 of BLM IM 97-46). This is to say that information maintained in electronic format is subject to the FOIA, and searches must be made through any electronic files which contain information responsive to the FOIA request. Any item containing information that is in the possession and control of an agency is usually considered to be an agency record under the FOIA. However, for purposes of the FOIA, "records" do not include: (A) Library and museum material acquired or received and preserved solely for reference or exhibition purposes; (B) stocks of publications and of processed documents; and (C) computer software which is obtained by an agency under a licensing agreement prohibiting its replications or distributions.

Also see pages 23 and 36 of the 1998 Dept. of Justice FOIA overview.

Please make sure the offices under your oversight are familiar with what records the FOIA covers.

Thanks

CC: INTERIOR-CCM.~IOS#MAIN. Alexandra, INTERIOR

## FOIA EXEMPTIONS\*

**NOTE: “Only that portion of the record that applies to the exemption may be withheld.”**

Exemption 1 - Classified Secret Matters of National Defense or Foreign Policy.

Exemption 2 - Internal Personnel Rules and Practices of an Agency.

Exemption 3 - Matters Specifically Exempted From Disclosure by Statute.

Exemption 4 - Trade Secrets and Confidential Business Information.

Exemption 5 - Internal Memoranda

Exemption 6- Personal Privacy

Exemption 7 - Investigatory Files

- 7(A) Law Enforcement Proceedings
- 7(B) Law Enforcement/Right to a Fair Trial
- 7(C) Law Enforcement/Personal Privacy
- 7(D) Law Enforcement/Confidential Sources
- 7(E) Law Enforcement Investigations
- 7(F) Law Enforcement/Physical Safety

Exemption 8 - Records of Financial Institutions.

Exemption 9 - Geological and Geophysical Information

\* Each of the nine FOIA exemptions are described in detail in BLM Manual 1278.32.

## **FOIA EXEMPTION CHECK LIST**

Page 1 of 2

The following analysis may help the BLM employee in identifying which exemption applies to records requested within the non-public files.

1. **ATTORNEY-CLIENT PRIVILEGED (Exemption 5):** Was the information provided to the Department's attorney with the intent that it would be held confidential? Has the information been kept confidential within the Bureau?
2. **ATTORNEY WORK-PRODUCT (Exemption 5):** Was the information prepared by or on behalf of the Department in anticipation of future litigation?
3. **COMMERCIAL INFORMATION (Exemption 4):** Does the information relate to business or trade in which the submitter has a commercial interest?
4. **FINANCIAL INFORMATION (Exemption 4):** Is this information taken directly from the company's ledger? Is this a final audit summary or auditor's working papers?
5. **CONFIDENTIAL INFORMATION (Exemption 4):** Will release of the information cause harm to the competitive position of the company from whom the information was obtained, or impair the Government's ability to obtain similar information in the future? (Under the FOIA and Executive Order 12600, the company must be notified and allowed to review any confidential commercial information which may be released by the Bureau).
6. **PERSONAL INFORMATION (Exemption 6 or 7):** Would release of the information be an unwarranted invasion of personal privacy? For example, is there a social security number, credit card number, home address, phone number, complaint against an employee, age, and medical history, etc.
7. **PHONE CONVERSATION RECORDS:** Only information that is otherwise eligible to be withheld under a FOIA exemption may be withheld; e.g. identifiers of confidential complainants, privileged attorney-client communications, etc. Phone conversation records are not per se withholdable, if they have been circulated within the Bureau, filed in Bureau files, or otherwise used for official purposes.
8. **PRE-DECISIONAL DOCUMENT (Exemption 5):** (1) Has this document ever been released outside the Bureau to a non-Federal Government entity? If it has, in most cases, it should be released. (2) Is this document or section of document a final policy, or an opinion or recommendation? If the later, then Exemption 5 applies. (3) If this document is not signed or dated, is it a final or draft document? If a draft, then Exemption 5 applies.
9. **PUBLIC FILES:** If a document has been stored in files routinely and readily available to the public, such as reading-room files, in most cases the document should be released, unless they are confidential files marked and placed in the public file. BLM should review public files for any confidential material which may have been inadvertently placed within the file.

## **FOIA EXEMPTION CHECK LIST**

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10. **PERSONAL FILES VS AGENCY FILES:** Notes created solely for the convenience of the writer that are not required to be made by the writer as an official duty, and are not (1) shared with anyone, (2) kept in Bureau files, or (3) used in an adverse action against the employee are not considered Bureau records under the FOIA and are not subject to a FOIA request.
11. **OTHER STATUTES (Exemption 3):** Is this information protected by another statute? The Indian Minerals Development Act, Federal Coal Leasing Amendments, Archaeological Resources Protection Act of 1979, and the National Historic Preservation Act Amendments, for example.

**HARM STATEMENT**

“...the Bureau may apply the FOIA exemptions to withhold information only when the agency reasonably foresees that disclosure would be harmful to the interest protected by the exemption.”

A “Harm Statement” identifies what harm would result if the information were released.\*

The Department requires its agencies to develop a “Harm Statement” to be used for each document, or portion of a document, withheld at BLM’s discretion under a FOIA exemption. It provides necessary information to the Solicitor’s office in the event of litigation.

When applying Exemption 5, a “discretionary” exemption, Government employees are required to identify what specific harm to Government operations or personal privacy will occur if there is a release of information.

\*Refer to Draft BLM FOIA Handbook, Chapter 3, Illustration 1, Page 1, for sample statements.

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

July 21, 1994

EMS TRANSMISSION 7/22/94

Instruction Memorandum No. 94-241

Expires 9/30/95

To: AD's, SD's, SCD, and AD-F&LE  
Attention: Records Administrators and FOIA Coordinators

From: Director

Subject: **Sound Grounds Determination for Withholding Bureau Information Under the Freedom of Information Act Exemptions**

This Instruction Memorandum (IM) transmits guidance and procedures for evaluating Bureau of Land Management (BLM) information and for applying the discretionary Freedom of Information Act (FOIA) exemptions under the new Department of Justice (DOJ) requirements.

Reference is made to IM 94-18, concerning the White House and Attorney General Reno's memorandum of October 4, 1993, issuing FOIA policy concerning the DOJ's new position concerning FOIA exemptions which do not specifically prohibit release of information. Such exemptions will be referred to as "discretionary" exemptions. Attachment 1 identifies these exemptions. The Bureau must now express how the release of the document will be harmful to the interest protected by the exemption, determine whether sound grounds exist to withhold the requested information under the FOIA, and consult with its FOIA attorney concerning this.

Also on February 3, 1994, the Office of the Secretary issued an Administrative Services Letter Number 64, explaining how the application of these new policies will affect the FOIA review and appeal process in the Department. Below is a summary of the changes which are now required by the Department and the DOJ, and which Bureau action offices and FOIA Coordinators will be required to follow immediately.

- 1) The Attorney General has stated in her memorandum that: It shall be the policy of the DOJ to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to the interest protected by the exemption. The Bureau may no longer withhold information merely because it meets the legal requirements for withholding pursuant to that exemption.



**Sound Grounds Determination for Withholding Bureau Information Under the  
Freedom of Information Act Exemptions (Cont'd)**

- 2) The Department of the Interior now requires supporting documentation when a FOIA appeal is made concerning the initial withholding of information under the discretionary exemption. It shall be BLM policy to complete such a statement attesting to the substantial harm that release of the documents could reasonably be presumed to cause. This statement is required as part of the initial FOIA process. An affidavit signed by the FOIA Coordinator and identifying the Solicitor consulted is also required. These documents will be filed with the FOIA case file, and will be provided to the Solicitor's Office when a FOIA appeal is made concerning that information. Refer to attachment 2 for a sample harm statement, and attachment 3 for a sample affidavit.
- 3) The Department now requires that an explanation of foreseeable "harm" be provided to requesters when information is denied under any of the discretionary FOIA exemptions. Attachment 5 provides a sample letter addressing this.
- 4) The DOI recently has advised Government agencies that the FOIA requester must also be informed when information meets the legal requirements of an exemption, and is being released by the agency because no foreseeable harm applies. Also see attachment 5 for sample language.

Information which may fall under Exemption 5 is often more difficult to identify, attachment 4 is provided to assist in making an analysis to determine if this exemption applies. If the information meets the legal definition of Exemption 5, a foreseeable harm must also be expressed.

**A Reminder:** In all cases, any releasable portion of the document which does not fall under a specific FOIA exemption, and for which sound grounds does not apply, should be released.

If you have any questions concerning this memorandum, please call Marilyn Legnini of the Division of Information Resources Management, Branch of Information Access Policy and Coordination (WO-872), at (202) 452-5013.

Signed  
Terrence F. Call  
Chief, Division of Information  
Resources Management

Authenticated  
Robert M. Williams  
Directives, W0873

**5 Attachments**

- 1 - List of FOIA Exemptions (2 pp)
- 2 - Statement of Harm for Discretionary Exemptions (1p)
- 3 - Affidavit (1 p)
- 4 - Analysis for FOIA Exemption 5 (2 pp)
- 5 - Sample Letter Identifying Harm (1 p)

## FOIA Exemptions

### A. Exemptions Which Do Not Specifically Prohibit Disclosure.

The Bureau has the option to apply the following exemptions when there is a foreseeable harm in releasing this information, and only after consultation with its FOIA attorney. Also refer to the Bureau of Land Management Manual Section 1278.32E, and the 1993 DOI FOIA Overview.

<b>1. "Low" Exemption 2:</b>	"Records related to the internal personnel rules and practices of an agency ....which are of a relatively trivial nature".
<b>2. Exemption 5:</b>	"Inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency".
The three primary privileges incorporated into Exemption 5 are: (a) The deliberative process privilege; (b) the attorney work-product privilege; and (c) the attorney-client privilege.	
<b>3. Exemption 6:</b>	<b>(To the extent the information is not protected by the Privacy Act).</b> "Personnel and medical files and similar files".
<b>4. Exemption 7(C):</b>	<b>(To the extent the information is not protected by the Privacy Act).</b> "Law enforcement information ... the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy".
<b>5. Exemption 7(D):</b>	<b>(To the extent the information consists of non identifying information provided by a source).</b> "Records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source
<b>6. Exemption 7(E):</b>	"Protection to all law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law"
<b>7. Exemption 8:</b>	"Matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions".
<b>8. Exemption 9:</b>	"Geological and geophysical information and data, including maps, concerning wells".

**B. Exemptions Which Do Not Require Sound Grounds Explanation for      Withholding.**

Documentation is not required where the withholdings are made pursuant to the following exemptions:

<b>1. Exemption 1:</b>	National Security information.
<b>2. "High" Exemption 2:</b>	"Records related to the internal personnel rules and practices of an agency more internal matters, the disclosure of which would risk circumvention of a legal requirement".
<b>3. Exemption 3:</b>	"Information specifically exempted from disclosure by statute".
<b>4. Exemption 4:</b>	"Trade secrets and commercial or financial information obtained from a person that is privileged or confidential"
<b>5. Exemption 7(A):</b>	"Records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information...could reasonably be expected to interfere with enforcement proceedings"
<b>6. Exemption 7(B):</b>	"Records or information compiled for law enforcement purposes the disclosure of which would deprive a person of a right to a fair trial or an impartial adjudication".
<b>7. Exemption 6:</b>	<b>(To the extent that the documents are covered by the Privacy Act).</b> See above.
<b>8. Exemption 7(C):</b>	<b>(To the extent that the documents are covered by the Privacy Act).</b> See above.
<b>9. Exemption 7(D):</b>	<b>(For all information other than information that consists of non-identifying information provided by a source).</b>

## Statement of Harm

**Documentation for "Sound Grounds" in Withholding is Required for Each Document (or Portion of Document) Being Withheld for Discretionary FOIA Exemptions. Attach Statements to the Affidavit (See attachment 3).**

Document Number	Date	<u>Identification of Subject, Exemption Cited, and Harm if Released</u>
1	4/16/92	Letter from the District Office to the State Director seeking guidance for oil shale mining. Exempt under FOIA Exemption 5 as pre decisional. A final decision has not been made, and release of the information may inhibit frank discussions on matters of policy between subordinates and superiors
2	5/6/92	Record of phone conversation between the Washington Office and the State Director providing advice on mining policy. Exempt under FOIA Exemption 5 as pre-decisional. Release of this information would harm the quality of agency policy since a final decision on policy has not been made.
3		Law enforcement manuals requested are being withheld under "high" Exemption 2, which concern substantial internal matters, the disclosure of which would risk circumvention of a legal requirement. Release of this information would risk the circumvention of agency regulations or statutes.

Attachment 3

**Affidavit**  
**(One Should Be Completed For Each FOIA Request)**

The attached harm statements identify the document(s) (or withholdable portions of documents) being withheld. It is determined that sound grounds exist for withholding the document(s) as identified, and under the exemption(s) indicated. The Solicitor's Office was consulted concerning withholding of this information. The following identifies the attorney consulted:

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Phone #: \_\_\_\_\_

( ) I have determined that disclosure of all documents being released would not be harmful to an interest protected by that exemption.

( ) I have determined in consultation with our FOIA attorney, that sound grounds exist for withholding the document(s) pursuant to the exemption(s) indicated. Attached is a written statement detailing the reasonably foreseeable consequences of disclosure of the document(s).

\_\_\_\_\_  
(Name)  
Headquarters or State FOIA Officer or Coordinator

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Bureau)

## **REVIEW FOR FOIA EXEMPTION 5**

### **I. Legal Definition of Exemption 5:**

Exemption 5 exempts from disclosure: "...inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency". These privileges include: (a) Attorney-client privilege; (b) attorney-work product privilege, and (c) deliberative process.

### **II. Exemption 5 Determination:**

The following is to assist in making a determination for whether information fits the legal definition for withholding under Exemption 5. Responses should be "yes" to the following to fulfill the legal definition of the exemption:

- A. Was this document produced by the Federal Government?
- B. If no, was it produced by an outside source in the capacity of a consultant?
- C. Was it shared only within the Executive Branch?
- D. Is the requester currently in litigation with the Bureau?

To continue with Exemption 5 analysis, the document or information must be produced by the Executive Branch (or by a consultant), and not officially released outside the Executive Branch.

### **III. To determine if the deliberative privilege will apply, responses should be "yes" to the following:**

- A. Is the information pre-decisional (or antecedent to the formal or informal adoption of an agency policy)?
- B. Did the information play a key role in the course of the Bureau's decision making process?
- C. Is the information deliberative (direct part of the deliberative process, i.e., makes recommendations or opinions on legal or policy matters)?
- D. Was the preparer of the document the decision maker for the established policy?
- E. Does the document contain statements of policy and final opinions that have the force of law, that implement an established BLM or Departmental policy, or that explain actions that an agency has already taken?
  - If so, does any portion of the document discuss pre-decisional recommendations that were not expressly adopted? Mark those passages discussing unadopted, pre-decisional recommendations.
- F. Does the document reflect the decision making process?
- G. Will release affect the integrity of the deliberative process?

H. Will release reveal the status of the decision making process?

I. Does this information concern opinions and recommendations (vs. factual information)?

J. If the record contains factual material, mark below the type(s) of factual material included:

- Were the facts selected from a larger group of facts? i.e., were the facts distilled from many source materials?

**III. To determine if the deliberative privilege will apply, responses should be "yes" to the following:**

J. If the record contains factual material, mark below the type(s) of factual material included: (Cont'd)

- Are the facts so inextricable intertwined with the opinions, recommendation and other deliberative material in the record that release would reveal the agency's deliberations?

- Do the facts reflect a point of view? i.e., are the facts organized thematically or are they merely a chronological recitation of an event such as a meeting?

- Are the facts scientific and do they reflect an interpretation of technical data?

Balanced with the other questions, the information checked may be protected under the deliberative process privilege.

K. Is this a non-factual portion of a briefing paper?

L. Is this a non-factual portion of a draft?

**IV. Attorney Work-Product Privilege Under Exemption 5:**

Protects documents and other memoranda prepared by an attorney in contemplation of litigation.

A. Does this information fall under this category?

B. Is there a specific articulable claim that is likely to lead to litigation?

**V. Attorney-Client Privilege Under Exemption 5:**

Protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. This is not limited to the context of litigation.

A. Does this information fall under this category?

**VI. Harm Considerations for Exemption 5:**

Regardless of whether Exemption 5 can be legally cited to withhold this document, a foreseeable "harm(s)" must be identified before the document can be withheld. The following questions may help to identify this harm.

- A. Will release of this document harm the quality of agency decisions? If so, explain how this may happen?
- B. Will open, frank discussions on matters of policy between subordinates and superiors be inhibited? If so, explain how this may happen?
- C. Will release allow for premature disclosure of proposed policies before they are finally adopted? If so, explain how this may happen?
- D. Will release cause public confusion that might result from disclosure of reasons and rationales that were not in fact the grounds for an agency's action? If so, explain how this may happen?

### **Sample Letter**

ADDRESS

Dear -(Name).

This is in response to your Freedom of Information Act (FOIA) request of (date) addressed to (name). This office received your request on (date). You requested information concerning the bypass of the Federal ban on predator control on Bureau of Land Management (BLM) lands.

Enclosed are documents in response to your request. The memorandum from the State Director to the District Office dated November 12, 1993, is being released. Even though the information falls under the legal description of FOIA Exemption 5 as pre-decisional information, sound grounds did not exist for withholding this information.

The following documents are being withheld for the reasons cited. Items being withheld under FOIA Exemption (b)(5) include statements of what harm the release of documents may cause:

- (1) BLM Issue Paper dated October 22, 1993, prepared by the State Director is considered deliberative and withheld under FOIA Exemption 5. The potential harm would be in BLM revealing a legal position for which BLM has not committed itself to at this time.
- (2) The Office of the Solicitor memorandum to the BLM dated December 3, 1993, is considered pre-decisional and attorney-client privileged under FOIA exemption 5. The potential harm would be in BLM disclosing a settlement position.

The person responsible for this partial denial is [(name) and/or] the undersigned. Under 43 CFR section 2.18, you have the right to appeal this partial denial of your FOIA request by writing to:

Freedom of Information Act Appeals Office  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
1849 C. Street, N.W., Room 5026 - MIB  
Washington, D.C. 20240



Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date that you receive this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this partial denial is in error.

If you have any questions, please contact (name) at (phone number)

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Enclosures

# **CHECKLIST FOR PREPARING A FOIA RESPONSE**

Checklist is from the following document:

H-1278-1 - FREEDOM OF INFORMATION ACT HANDBOOK  
Chapter 4 - Processing Initial Freedom of Information Act Requests  
Illustration 1, Page 1

**1. Was the request made in writing, and did it cite the Act?**

Technically it would not be considered a FOIA request. However, even though the Act is not cited, it may be treated as a FOIA if the records requested are considered non-public because a FOIA exemption may apply.

**2. Did the request reasonably describe the records requested?**

If not, the requester should be contacted to clarify what documents he specifically wants.

**3. Did the request specify the fee category and identify how much they are willing to pay?**

If the fee category (43 CFR 2.20) is not obvious, and the maximum amount the requester will pay in fees is not provided, contact the requester for this information.

**4. Is there a need to clarify whether a fee waiver is justified?**

If so, the requester should state in writing how he qualifies for a fee waiver in connection with the particular request. Refer to (43 CFR 2.21(a)) for conditions for justification of a fee waiver.

**5. Does the FOIA requester desire a record that is not in existence at the date of the request?**

A Federal agency is not required by the FOIA to do research for a requester, to compile or analyze data, or to answer questions. Minor reprogramming of computer programs may be advisable, when the reprogramming is not burdensome or extremely costly to the Bureau.

An agency has the right to choose the format of disclosure where the choice is reasonable under the circumstances. Department regulations provide that where the agency determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the agency may, in its discretion, agree to creation of a new record as an alternate to disclosing existing records.

## FEE WAIVERS

### References:

BLM Manual 1278.36  
43 CFR 2.21(a)  
383 DM 15, Section 4.10

***Generally:*** “Documents shall be furnished without charge or at a reduced fee if disclosure is in the public interest.”

### Waiver of Fees

1. Does the record concern government operations or activities?
  - If so, is disclosure likely to contribute to public understanding not previously existing.
  - Disclosure must contribute to the understanding of the public at large as opposed to the individual requestor.

#### *Clarification:*

- (a) Is the information new?
- (b) Does disclosure support public oversight of government operations including quality of government activities and the effect of policy and regulations on public health and safety?
- (c) Does disclosure clarify data on past or present government operations?

*Example:* Administrative staff manuals and instructions to staff that affect a member of the public.

2. Does the requester have a commercial, trade or profit interest that would be furthered by disclosure?

### Reduction of Fees

- If a reasonable sampling of a voluminous amount of repetitive records would contribute to public understanding.
- If some documents warrant a fee waiver and others do not.

### Denial of a Waiver

If a fee waiver or reduction of fees is denied, the requester must be notified in writing.

The denial letter must include:

- Basis for denial
- Name and position title of person responsible for denial (BLM State Director)
- Statement that denial may be appealed. (reference 43 CFR 2.18)

### Discretionary Waivers

Refer to Appendix 3 in this document.

(Departmental Manual 383 DM 15, Chapter 4, Section 4.13)

### Sample Fee Waiver Letters

(383 DM 15, Chapter 4, Illustrations)

## FOIA APPEALS

### Right of Appeal

A requester may appeal to the Department:

FOIA Appeals Officer  
Office of the Assistant Secretary,  
Policy, Budget and Administration  
U.S. Department of the Interior  
Washington, D.C. 20240

### Valid Reason for Appeal

- 1 - Records have been denied
- 2 - Request has been denied
  - Failure to describe the records requested
  - Records cannot be located
  - Procedural deficiency
- 3 - Fee waiver denied
- 4 - Request not decided within designated time limit

### Time Limit for Appeal

- 20 working days from date of initial denial or partial denial

### Form of Appeal

- Must be in writing  
(Requester may reference 43 CFR 2.18 for documents required for submission of appeal.)

### Sample Language for Notification of Right to Appeal

Refer to Appendix 2, this document.  
(Draft FOIA Handbook Samples 17-20 and 22.)

## **REQUESTS REFERRED TO OTHER AGENCIES OR FACILITIES**

**If your office receives a request for records in its possession that originated with another agency or facility, you must refer the requester to the originating agency or facility.**

1 - Inform the requester in writing that you are forwarding the request to another agency.  
(See Illustration 5, 383 DM 15, Chapter 3)

2 - Forward the request to the action agency.  
(See Illustration 6, 383 DM 15, Chapter 3)

**If a request is referred to another office in the same bureau (e.g. State Office to a field office):**

1 - The requester is to be advised in writing of the referral.  
- Include mailing address of responsible office.  
- Include name and telephone number of a contact.  
(See Illustration 8, 383 DM 15, Chapter 3)

2 - The office receiving the initial request must send copies of the original request and referral letter to the appropriate office providing response.  
(See Illustration 7, 383 DM 15, Chapter 3)

## **REPORTING REQUIREMENTS**

- < Maintain data on the number of FOIA requests received and the number of denials.
- < Field Office Coordinators report data to the State Records Administrator/FOIA Coordinator each January.
- < State FOIA Coordinator consolidates State Office and Field Office submissions and reports to the Director in Washington.

**Note:** If you have maintained a FOIA log with information pertaining to all requests, this reporting process should not be a difficult task.

**FIELD OFFICE CHECKLIST**  
**PROCESSING A FOIA REQUEST**

Page 1 of 2

Mail Room

- < Date/time stamp request (20 day response time begins).
- < Hand-carry request to FOIA Coordinator

FOIA Coordinator

- < Offices reporting to CDD make a copy of the request and fax it to the District Coordinator.
- < Make a copy of the request for appropriate staff member.
- < Maintain a log of FOIA requests.
- < Date Received
- < FOIA Number = FY + sequential number
- < Requester Name
- < Project or Case File Number
- < Referred to: (staff member name)
- < Remarks\*/date

\*The remarks column may be used to track the status of a FOIA request. e.g.

- C Request faxed to State Office and District./Date
- C Draft letter to staff member for review./Date
- C Letter informing requester more specific information is needed./Date
- < Read the request thoroughly and consult with staff members to determine the necessary response.
- < Prior to the 20-day expiration date, prepare an interim letter if necessary.
- < This letter should request an additional 10-day response period to process the request
- < Prepare letter for Field Office Manager's signature.

- < If a fee waiver is requested and denied, prepare a denial letter, to be signed by the State Director, (requesting agreement to pay necessary fees) and forward it to the State FOIA Coordinator.
  - < Prepare draft response.
  - < Response should include a “Harm Statement” for records being withheld at BLM’s discretion.
  - < Review by Field Office Manager.
  - < Prepare final response for Field Office Manager’s signature, with “cc” for State FOIA Coordinator.
  - < If request is denied in whole or part, prepare response for State Director’s signature and forward to State FOIA Coordinator for follow-up.\*
  - < FOIA mandates release of existing documents. If a document does not already exist, prepare a “no response” (see sample in appendix 3) and provide appeal rights. Prepare the response for State Director’s signature.
  - < FOIA does not require that questions be answered. Such requests can be denied, however, program staff may opt to respond to the questions.
- \*Note: Offices reporting to CDD, denials in whole or part are to be routed through the CDD FOIA Coordinator.
- < Consult with District or State Office Coordinator if/when advice is needed.
  - < Secure FOIA request file in a locked cabinet.
  - < Consult with the office Records Manager to verify that you are referencing the latest disposition schedule for FOIA requests and appeals files.



(Sample)  
**FOIA REQUEST LOG**

DATE REC'D	FOIA #	REQUESTER NAME	PROJECT/CASE FILE NUMBER	REFERRED TO:	REMARKS

## FOIA MANAGEMENT GUIDELINES FOR CDD FIELD OFFICES

Page 1 of 3

1. **Each Field Office should identify a FOIA Coordinator and a back-up.**
2. **Post both names in the mail room for the Mail Clerk and his/her back-up.**

### 3. **Due Dates**

- < Allow 8 working days for simple requests.
- < Allow 18 working days for complex requests.

Note: By law, BLM has 20 working days to respond and can request a 10-day extension.

### 4. **Mail Clerk**

- < Date stamp FOIA requests and deliver them to the FOIA Coordinator.
- < If the FOIA Coordinator is away, give the request to the back-up FOIA Coordinator.

### 5. **FOIA Coordinator and his/her back-up**

- < Maintain a single FOIA log
  - S Record the date and time a FOIA is received, the nature of the request, the name of the Branch Chief/Acting the request is assigned to, and a due date.
- < Make two copies of the request.
  - S One copy to the Field Office Manager
  - S One copy to the Branch Chief the Field Office Manager assigns to process the request.
  - S FOIA Coordinator keeps the original.
- < Follow up with staff member and/or Branch Chief to ensure requests are responded to within established legal time frames.

6. **Note:** If the scope of a request seems outrageous or voluminous, the FOIA Coordinator or staff specialist assigned the request should call the requester to find out exactly what documents he/she actually wants and to see if the requester will agree to modify their request. If the requester's phone number is unknown, a letter should be prepared for the Field Office Manager's signature that explains BLM's concerns for filling the request and the possible costs involved.

If the requester agrees to modify their FOIA request, ask that the modification be submitted in writing. Alternatively, the FOIA requester can prepare a letter confirming the request was verbally modified. Document the conversation with a Phone Confirmation Record and reference the conversation or the letter in the final response.

7. **Cost Recovery:** The "Other Requesters" category entitles those FOIA requesters to 100 pages of xeroxing and 2 hours of search time for free. Obtain written assurance that such requesters will pay additional costs before they are incurred.

## FOIA MANAGEMENT GUIDELINES FOR CDD FIELD OFFICES

Page 2 of 2

8. **Fee Waiver denials** must be reviewed by the Solicitor and signed by the State Director. Prepare a draft fee waiver denial letter and forward it (including E-mailing the draft response) along with a copy of the request to the CDD FOIA Coordinator (CA-060.33).
9. The **Field Office Manager/Acting** signs responses if no records have been denied.
10. The **FOIA Coordinator**
  - < Submit a courtesy copy of each FOIA request received and BLM's response to the State FOIA Coordinator (CA-941).
  - < Note the log when the response is signed, Include in the log:
    - staff time devoted to responding to the request
    - applicable charges billed to the requester
    - date payment was received.
  - < Place the closed FOIA file in a locked cabinet or drawer until the appropriate hold time under the current records disposition schedule has expired.
11. The **Annual FOIA Report** will be very simple to complete at the end of the year if the FOIA Coordinator maintains and keeps the log up to date!
12. **Denials/Partial Denials:** The Field Office Manager/Acting may not sign any request in which records are withheld. Only the State Director has the authority to sign a FOIA response withholding/denying records.

### **PROCEDURES FOR A FOIA DENIAL:**

- < **Field Office FOIA Coordinator**
  - Copy all responsive documents.
  - Segregate records that are exempt under the FOIA and should be withheld.
  - For documents that can be partially released, include both an unredacted and a partially redacted copy.
- < Prepare a draft response with an explanation for withholding records.
  - Cite the specific FOIA exemption(s) involved
  - Forward the package, including E-mailing the draft response, to the District Public Affairs Officer.
- < **District Office FOIA Coordinator**
  - Review the file.
  - Finalize the draft for the DM's initials
  - Forward the package to the State FOIA Coordinator (CA-941).

## FOIA MANAGEMENT GUIDELINES FOR CDD FIELD OFFICES

Page 3 of 3

- < **Solicitor's Office**
    - Examines all documents withheld in a FOIA
    - A complete copy of the file is required for the solicitor to be assured the denial would be defensible in a court of law.
  - < **State Office FOIA Coordinator**
    - Prepare a final response for the Solicitor's review and the State Director's signature.
    - Forward copy of response to the Field Office FOIA Coordinator
  - < **Field Office FOIA Coordinator**
    - Update the log.
    - File document in FOIA file in a locked cabinet or drawer.
13. **Request the assistance of the District FOIA Officer** when reviewing records if there is any question as to whether a document is confidential and should be withheld — utilize our expertise!

## **INTRODUCTION TO THE PRIVACY ACT**

“As a government employee you may have to work with or handle records or information about individuals. Generally, such records will require special handling and safeguarding because they are subject to the requirement of the Privacy Act. The Privacy Act establishes special requirements for collecting, creating, maintaining, and distributing records that can be retrieved by the name of an individual or other identifier (whether in paper or electronic form). These are called Privacy Act Systems of Records.”

“The subject of a Privacy Act System of Records can ask to see, correct, and appeal the information in that record. These disclosure restrictions are subject to civil and criminal penalties. For more information, see 3 CFR 2.56 or contact your Freedom of Information Act (FOIA)/Privacy Act Coordinator.”

## **PRIVACY ACT REQUESTS**

Written requests for employee records, other than those noted below, are to be processed as a FOIA request. Such requests are to be forwarded to the District or State FOIA Officer, as you are so directed.

Telephone requests may include:

- Credit or loan companies verifying salary
- Requests for employment verification
- Public requests for information about employees

The following items from current or former employee records are public information:

- name
- duty station
- position title
- grade
- gross annual salary (do not provide net salary information)
- civil service status (career, career conditional)
- tenure of employment (permanent, temporary or part time)
- length of service in BLM and the government

Requests for information pertaining to employees should be forwarded to the individual or staff who has access to personnel records (supervisors, District or State Office Branch of Human Resources).

**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**OFFICE OF THE SECRETARY**  
Washington, D.C. 20240

March 1, 1996

IRM BULLETIN NO. 1996-004

To: Bureau and Office Freedom of Information Act (FOIA) Officers

From: Gayle F. Gordon, Acting Director  
Office of Information Resources Management (PIR)

Subject: **Processing FOIA Requests for Personal and Personnel-Related Information**

During the past few months, several questions have been raised concerning the release ability of various types of personal and personnel-related information. From our discussions, it appears that disclosure of this information sometimes varies from bureau to bureau. To ensure that requests for this type of information are processed consistently throughout the Department, the following policy guidelines are provided. It should be noted, however, that the examples cited below are intended as general guidelines only. Documents should be reviewed on a case-by-case basis as the information at issue and the individual circumstances will affect the Department's release determination.

This directive supersedes the October 4, 1991, memorandum on processing FOIA requests for SF-171 information, issued by the Departmental FOIA Officer, as well as any other guidance concerning personal/personnel-related information, including the Department of the Interior (DOI) FOIA Handbook (383 DM 15). The FOIA Handbook will be revised to incorporate the guidance contained in this memorandum.

Exemption (6) of the FOIA is usually invoked to withhold information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of an individual's personal privacy. Pursuant to the guidance of the courts, the Department maintains that an individual has a personal privacy interest in the information listed under B, below. Accordingly, this information is eligible for protection under exemption (6) if:

- (1) There is no public interest qualifying under the standard set forth in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) and *Department of Defense v. Federal Labor Relations Authority*, 62 U.S.L.W. 4143 (U.S. February 23, 1994) (in order to qualify as a public interest, release of the information itself would have to shed light on the agency's performance of its statutory duties); or
- (2) There is a public interest under exemption (6), but the public interest in disclosure does not outweigh the potential harm to an individual's personal privacy when the required balancing test is

**Processing FOIA Requests for Personal and Personnel-Related Information (Cont'd)**

performed (see the FOIA Handbook, Chapter 5.4F(3)). However, exemption (6) may not be used where the privacy interest to be protected is the requester's. Therefore, this exemption should not be used to withhold information from a requester that he/she would be entitled to under the Privacy Act (information about himself or herself). For additional guidance, see the FOIA Handbook, Chapter 5.4F).

Specific examples are provided below:

**A. Personal/personnel-related information *generally releasable* under the FOIA (see 5 CFR <sup>o</sup> 293.311 and 383 DM 15, Chapter 3.22).**

- (1) Names of present and former employees.
- (2) Present and past position titles and occupational series.
- (3) Present and past grades.
- (4) Present and past annual salary rates--including amounts received for performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials (normally, the name of the individual, position, type of award (performance, incentive, meritorious or distinguished service) and the dollar amount are releasable).
- (5) Other awards and honors received in an individual's professional capacity, including justification for all awards and honors except for information protected under exemption 6.
- (6) Membership in organizations related to employee's profession (see B(26)).
- (7) Present and past duty stations (this includes official mailing and E-mail addresses of DOI employees); as well as official telephone numbers as they appear in the DOI Telephone Directory.
- (8) Position descriptions, identification of job elements and those performance standards (but not actual performance appraisals), the release of which would not interfere with law enforcement programs or inhibit agency effectiveness. Performance elements and standards may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.
- (9) Educational background--high school, college/graduate school; technical education related to the employee's (or successful applicant's) profession and/or position (see B(1), below).



**A. Personal/personnel-related information *generally releasable* under the FOIA  
(see 5 CFR § 293.311 and 383 DM 15, Chapter 3.22). (Cont'd)**

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**Processing FOIA Requests for Personal and Personnel-Related Information (Cont'd)**

(10) Special skills, accomplishments, and awards related to the employee's (or successful applicant's) profession and/or position.

(11) Past Federal/State/local government employment and salary including reason for leaving except when protected under exemption (6) (see B(1), below).

(12) All other prior employment related to position held including reason for leaving except when protected under exemption (6) (redact salary, name and telephone number of supervisor) (see B(1), below).

(13) Type of job applying for.

(14) Sex.

(15) Citizenship.

(16) Information pertaining to military service and veteran preference, e.g., fact that an individual served, military service number, dates and branch for all active military service, rank, medals, badges or awards received, fact of veteran preference (see B(27) and (28), below).

(17) Fact of recommendation for promotion, reassignment, appointment, etc., after action occurs except for information protected under exemption 6.

(18) Letters of appreciation and commendation from professional associates.

(19) Standard payroll forms (sanitized of any personal information).

(20) SF 171, Application for Federal Employment, and other job application forms for the successful candidate or the incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a) and B(12), below, regarding the SF-171's of unsuccessful applicants).

(21) SF 50, Notification of Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(22) SF 52, Request for Personnel Action (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(23) Verification of Indian Preference for Employment (Form S-4432) and Certificate of Indian

Blood for successful applicant or incumbent (sanitized of any exempt material--see the FOIA Handbook, Chapter 5.4F(7)(a)).

(24) Factors used in ranking job applicants (not to be confused with a crediting plan cited under C(1), below).

(25) Name of the selecting official.

(26) Panel ratings and scores of the successful job candidate (names of raters should be protected) (see C(4), below).

(27) Members of the bargaining unit--names of all members (see B(7), below).

(28) Names of Federal employees involved in union activities during working hours.

(29) Number of hours worked, including overtime, and total number of hours of leave taken (see B(11), below).

(30) Names of individuals who applied for and received the buyout and have separated from the agency (see B(8), below).

(31) Service computation date and information related to tenure.

(32) Information about deceased persons unless exemption 6 is applicable (see the FOIA Handbook, Chapter 5.4F(5)).

(33) Names of FOIA requesters except when they are making first party requests (see B(30))\*.

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\*The names of FOIA requesters are releasable as they do not ordinarily expect that their names will be kept private; therefore, release would not cause even a minimal invasion of their personal privacy. Personal information about the requesters, however, such as home addresses and telephone numbers should not be disclosed.

**B. Personal/personnel-related information *generally withheld* under exemption 6 of the FOIA (see 383 DM 5.4F(7))**

(1) Personal identifying information such as:

- home address and telephone number;
- social security number;
- age, place and date of birth;
- other names used;

**B. Personal/personnel-related information *generally withheld* under exemption 6 of the FOIA (see 383 DM 5.4F(7))** (Continued)

- marital status;
- race and/or ethnic background;
- an individual's party or union affiliation;
- technical education--not related to the position held (see A(9), above);
- work experience--not related to the professional qualifications for the position held (see A(11) and (12), above);
- whether an employer may be contacted regarding an individual's work record;
- availability for employment;
- details of health and insurance benefits;
- allegations of misconduct or arrests;
- information concerning or provided by relatives and references;
- other background information which is not work related; and
- tribal affiliation, degree of Indian blood ("quantum"), lineal heritage/history.

(2) Payroll information--number of deductions and the amounts, fringe benefit payments, number of withholding exemptions and net wages.

(3) Financial information such as an individual's credit rating, personal credit card numbers, business credit card numbers, credit card statements.

(4) Personal cellular telephone and beeper numbers of private individuals; official cellular telephone and beeper numbers of security/special contact personnel (exemptions "high" (2) and (7), also possible).

(5) PIN (personal identification number).

(6) Names of dues paying members of the bargaining unit (see A(27), above).

(7) Names of individuals who applied for the buyout, but did not receive it (see A(30),above).

(8) Performance appraisals including any narrative material.

(9) Supervisory notes on an employee's performance.

(10) Time and attendance records (the amount of sick or annual leave, leave without pay (LWOP), absent without leave (AWOL) and other personal information--see the FOIA

**B. Personal/personnel-related information *generally withheld* under exemption 6 of the FOIA (see 383 DM 5.4F(7))** (Continued)

Handbook, Chapter 5.4F(7)(a) and A(29), above).

(11) SF-171s of unsuccessful applicants for employment including their identities, qualifications, and any narrative material (see A(20), above).

(12) The knowledge, skills, abilities and personal characteristics of unsuccessful applicants.

(13) Supervisory evaluation of a candidate for a particular position and assessment of professional conduct, ability, etc.

(14) Referral lists of qualified candidates and the roster of applicants for a particular position, except for the successful candidate.

(15) Reasons for job termination.

(16) Employee grievance and response to grievance.

(17) Records regarding the outcome of an investigation of employee conduct (where wrongdoing by high-level Government official is shown, the result may be different).

(18) Letters of reprimand and suspension notices.

(19) EEO investigative case file (see ASB No. 95-9, dated September 28, 1995--exemptions (7C), (7A), and (5), also may apply).

(20) Results of a complaint by an employee against his/her supervisor (where wrongdoing is shown, the result may be different).

(21) Arbitration decision on an employee grievance (where a particular employee's decision is requested).

(22) Employee's resignation letter.

(23) Mailing lists that contain personal information (names, home addresses, and telephone numbers of individuals as opposed to businesses and other organizations) where the release would not shed light on the operations or activities of the Government (see the Reporter's Committee decision).

(24) Records concerning an employee's medical condition, history, and health test results.

(25) Membership in organizations other than those related to employee's profession (see A(6), above).

(26) Information pertaining to eligibility for 5- or 10-point veteran's preference.

(27) Information pertaining to whether an individual received an honorable or dishonorable discharge from military service.

(28) Tribal census and membership rolls.

(29) Names and home addresses of Privacy Act requesters and home addresses of FOIA requesters see A(33), above).

**C. In addition to information generally withheld pursuant to exemption (6), the following related information is also normally withheld under the FOIA:**

(1) Crediting plans used in determining the qualifications of a candidate for employment, advancement or promotion (exemption "high" (2));

(2) Criteria for interviewing prospective employees (exemption "high" (2));

(3) Examination questions and answers (exemption "high" (2)); and

(4) Ratings given to job applicants by panel members and the names of the panel members (ratings may be released if doing so will not reveal the identities of the panel members; the identities of the panel members may be released if doing so will not reveal the ratings they gave)--exemptions (5) and

(5) may be used to protect this information (see A(26), above).

Please ensure that all employees are advised of the guidance contained in this memorandum. This will ensure that uniform responses are provided and protect the Department's position in the event of litigation. It also will ensure that the privacy of the subject individual(s) is protected.

If you still have questions concerning the releaseability of any information, please consult the designated FOIA attorney for your bureau/office. When he/she is not available, please contact Ms. Alexandra Mallus at (202) 208-5342, by fax at (202) 208-5048, by E-mail--Mallus, Alexandra (use~Interior-CCM), or by Internet--href="mailto:Alexandra\_Mallus@ios.doi.gov">Alexandra\_Mallus@IOS.DOI.GOV

Alexandra\_Mallus@ios.doi.gov">Alexandra\_Mallus@IOS.DOI.GOV

We appreciate your assistance and cooperation in this regard.

1220 - RECORDS AND INFORMATION MANAGEMENT  
GRS/BLM Combined Records Schedules

**Schedule 14 - Information Services Records Disposition**

**Introduction**

This schedule covers certain records pertaining to informational services performed by BLM offices in their day to day affairs and in their relations with the public; including records created in administering Freedom of Information Act and Privacy Act programs. Except as otherwise specified in individual items, it applies to copies of these records wherever located in the bureau. Item 4 applies only to files maintained in the Headquarters office, responsible for the operation of the informational activities of BLM. Items 11 through 15 describe the files accumulated in carrying out the provisions of the Freedom of Information Act, and items 21 through 26 describe the files created in administering the provisions of the Privacy Act. Items 31 through 35 cover records created in response to requests for mandatory records declassification.

These records consist of inquiries, replies, and related correspondence; FOIA, Privacy Act, and mandatory declassification files, appeals, and other records; administrative background files for formal information releases; and records relating to inappropriate release of privileged information. Closely related records are covered by other schedules, such as records relating to budget presentation (Schedule 5) and printing, duplicating, and distribution records (Schedule 13). Records created prior to January 1, 1921, must be offered to NARA for appraisal before you may apply this schedule.

All records described in this schedule are authorized for disposal in both hard copy and electronic forms, as provided in Schedule 20.

Item	Record Series Description	Disposition Authority
1	<b>PUBLIC INFORMATION REQUESTS FILES [1120].</b> Requests for information and copies of replies thereto, involving no administrative actions, no policy decisions, and no special compilations or research, and requests for and transmittals of publications, photos, and other informational literature. Confidentiality: Non-public record category 3. Location: All.	TEMPORARY. Destroy when 3 months old or when no longer needed, whichever is sooner. GRS 14/1.
2	<b>PUBLIC ACKNOWLEDGMENT FILES [1120].</b> Acknowledgment and transmittals of inquiries and requests that have been referred elsewhere for reply. Confidentiality: Non-public record category 3. Location: All.	TEMPORARY. Destroy 3 months after acknowledgment and referral. GRS 14/2.
3	<b>PRESS SERVICE FILES [1120].</b> Press service teletype news, similar materials. Includes news clippings and "information only" copies of press releases and speeches from other offices. Forms: BLM 1120-7. Confidentiality: Public record category 1. Location: All. Exclusions: Record copies of official news releases (Schedule 14/37).	TEMPORARY. Destroy when 3 months old. GRS 14/3.
4	<b>PUBLIC INFORMATION PROJECT FILES [1120].</b> Informational services project case files maintained in formally designated information offices. Includes event plans, publicity plans, documentation of media coverage, advertising, copies of mailing lists, follow-up evaluations. Confidentiality: Non-public record category 3. Location: WO, SO, FO.	TEMPORARY. Destroy 1 year after close of file or 1 year after completion of project. GRS 14/4.
5	<b>PUBLIC COMMENDATION &amp; COMPLAINT CORRESPONDENCE FILES [1120].</b> Anonymous letters, letters of commendation, complaint, criticism, and suggestion and replies thereto. Confidentiality: Non-public record category 3. Location: All. Exclusions: Those records on the basis of which investigations were made or administrative action taken and those incorporated into individual personnel records (Schedule 1/1).	TEMPORARY. Destroy when 3 months old. GRS 14/5.

6	PUBLICATIONS INDEXES AND CHECKLISTS [1550]. Bibliographies, checklists, and indexes of BLM publications and releases. Confidentiality: Public record category 1. Location: All. Exclusions: Indexes and checklists relating to record sets scheduled as permanent which are transferred to NARA with the related records (Schedule 16/31a) and library indexes (Schedule 23/9).			TEMPORARY. Destroy when superseded or obsolete. GRS 14/6.
7-10	Reserved			
11	FREEDOM OF INFORMATION ACT (FOIA) REQUESTS FILES [1278]. Files created in response to requests for information under FOIA consisting of the original request, a copy of the reply thereto, and all related supporting files which may include official file copy of request record or copy thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-71. Location: All.			
	a.	FOIA Requests Case Files. Case files, containing the request, reply, other correspondence, and supporting documents, arranged by request number. Exclusions: Official file copy of the records requested if filed herein (item b).		
		(1)	Granting Access to All Requested Records.	TEMPORARY. Cutoff EOFY of reply. Destroy 2 years after cutoff. GRS 14/11a(1).
		(2)	Responses to FOIA Requests. Responding to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay agency reproduction fees.	
			(a) FOIA responses not appealed.	TEMPORARY. Cutoff EOFY of reply. Destroy 2 years after cutoff. GRS 14/11a(2)(a).
			(b) FOIA responses appealed.	Destroy as authorized under Schedule 14/12. GRS 14/11a(2)(b).
		(3)	Denying Access to All or Part of Records Requested.	
			(a) FOIA denials not appealed.	TEMPORARY. Cutoff EOFY of reply. Destroy 6 years after cutoff. GRS 14/11a(3)(a).
			(b) FOIA denials appealed.	Destroy as authorized under Schedule 14/12. GRS 14/11a(3)(b).
	b.	Official File Copy of Requested Records.		Dispose of in accordance with approved BLM disposition instructions for the related records, or with the related FOIA request, whichever is later. GRS 14/11b.

12	<b>FOIA APPEALS FILES [1278].</b> Files created in responding to administrative appeals under the FOIA for release of information denied by BLM, consisting of the appellant's letter, a copy of the reply thereto, and related supporting documents, which may include the official file copy of records under appeal or copy thereof. Confidentiality: Nonpublic record category 3; Privacy Act System Interior/OS-69. Location: All.		
	a.	Correspondence and Supporting Documents. Exclusions: the file copy of the records under appeal if filed herein.	TEMPORARY. Destroy 6 years after final determination by agency, 6 years after time at which a requester could file suit, or 3 years after final adjudication by the courts, whichever is later. GRS 14/12a.
	b.	Official File Copy of Records under Appeal.	TEMPORARY. Dispose of in accordance with approved agency disposition instructions for the related records or with the related FOIA request whichever is later. GRS 14/12b.
13	<b>FOIA CONTROL FILES [1278].</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requestor. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-71. Location: All.		
	a.	FOIA Control Registers or Listing.	TEMPORARY. Cutoff EOFY. Destroy 6 years after date of last entry. GRS 14/13a.
	b.	FOIA Control Files - Other.	TEMPORARY. Cutoff EOFY. Destroy 6 years after final action by BLM or after final adjudication by courts, whichever is later. GRS 14/13b.
14	<b>FOIA REPORTS FILES [1278].</b> Recurring reports and one-time information requirements relating to the agency implementation of the Freedom of Information Act. Exclusions: Annual reports to the Congress at the departmental or agency level. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Cut EOFY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/14.
15	<b>FOIA ADMINISTRATIVE FILES [1278].</b> Records relating to the general agency implementation of the FOIA, including notices, memoranda, routine correspondence, and related records. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/15. Note: If filed as general subject files, use Schedule 23/1a.
16-20	<b>Reserved</b>		



21	<b>PRIVACY ACT (PA) REQUEST FILES [1278].</b> Files created in response to requests from individuals to gain access to their records or to any information in the records pertaining to them, as provided under 5 USC 552a(d)(1). Files contain original request, copy of reply thereto, and all related supporting documents, which may include the official file copy of the records requested or copy thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.				
	a.	PA Request Correspondence and Support Documents. Exclusions: The official file copy of the records requested if filed herein.			
		(1)	Granting Access to All Requested Records.		TEMPORARY. Destroy 2 years after date of reply. GRS 14/21a(1).
		(2)	Responses to PA Requests. Responding to requests for nonexistent records, to requesters who provide inadequate descriptions, and to those who fail to pay reproduction fees.		
			(a)	PA responses not appealed.	TEMPORARY. Destroy 2 years after date of reply. GRS 14/21a(2)(a).
			(b)	PA responses appealed.	Dispose of in accordance with the approved disposition instructions for the related subject individual's re- cords, or 3 years after final adjudication by courts, whichever is later. GRS 14/21a(2)(b).
		(3)	Denying Access to All or Part of Records Requested.		
			(a)	PA denials not appealed.	TEMPORARY. Destroy 5 years after date of reply. GRS 14/21a(3)(a).
			(b)	PA denials appealed.	Dispose of in accordance with the approved disposition instructions for the related subject individual's re- cords, or 3 years after final adjudication by courts, whichever is later. GRS 14/21a(3)(b).
	b.	Official File Copy of Requested Records.			Dispose of in accordance with approved disposition instructions for the related records, or with the related Privacy Act request, whichever is later. GRS 14/21b.

22	<b>PRIVACY ACT AMENDMENT CASE FILES [1278].</b> Files relating to an individual's request to amend a record re. that individual as provided for under 5 USC 552a(d)(2); to the individual's request for a review of an agency's refusal of the individual's request to amend a record as provided for under 552a(d)(3); and to any civil action brought by the individual against the refusing agency as provided under 5 USC 552a(g). Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	PA Requests to Amend Agreed to by BLM. Includes individual's requests to amend and/or review refusal to amend, copies of BLM replies thereto, and related materials.	Dispose of in accordance with the approved disposition instructions for the related subject individual's record or 4 years after BLM's agreement to amend, whichever is later. GRS 14/22a.
	b.	PA Requests to Amend Refused by BLM. Includes individual's requests to amend and to review refusal to amend, copies of BLM replies thereto, statement of disagreement, BLM justification for refusal to amend the record, and related materials.	Dispose of in accordance with the approved disposition instructions for the related subject individual's record, 4 years after final determination by BLM, or 3 years after final adjudication by courts, whichever is later. GRS 14/22b.
	c.	PA Requests to Amend Appealed. Includes all files created in responding to appeals under the Privacy Act for refusal by any agency to amend a request.	Dispose of in accordance with the approved disposition instructions for the related subject individual's records, or 3 years after final adjudication by courts, whichever is later. GRS 14/22c.
23	<b>PRIVACY ACT ACCOUNTING OF DISCLOSURE FILES [1278].</b> Files maintained under provisions of 5 USC 552a(c) for accurate accounting of the date, nature, and purpose of each disclosure of a record to any person or another agency, including forms showing subject individual's name, requestor's name and address, purpose and date of disclosure, and proof of subject individual's consent when applicable. Confidentiality: Non- public record category 3; Privacy Act System Interior/OS-57. Location: All.		Dispose of in accordance with the approved disposition instructions for related subject individual's records, or 5 years after the disclosure for which the accountability was made, whichever is later. GRS 14/23.

24	<b>PRIVACY ACT CONTROL FILES [1278].</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature of request, and name and address of requestor. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	PA Control Registers or Listings.	TEMPORARY. Destroy 5 years after date of last entry. GRS 14/24a.
	b.	PA Control Files - Other.	TEMPORARY. Destroy 5 years after final action by BLM or final adjudication by courts, whichever is later. GRS 14/24b.
25	<b>PRIVACY ACT REPORT FILES [1278].</b> Recurring reports and one-time information requirement relating to agency implementation, including biennial reports to the Office of Management and Budget, and the Report on New Systems. Confidentiality: Nonpublic record category 3; Privacy Act System Interior/OS-57. Location: All.		TEMPORARY. Destroy when 2 years old. GRS 14/25.
26	<b>PRIVACY ACT GENERAL ADMINISTRATIVE FILES [1278].</b> Records relating to the general agency implementation of the Privacy Act, including notices, memoranda, routine correspondence, and related records. Confidentiality: Nonpublic record category 3. Location: All.		TEMPORARY. Destroy when 2 years old or sooner if no longer needed for administrative use. GRS 14/26. Note: If filed as general subject files, use Schedule 23/1a.
27-30	<b>Reserved</b>		
31	<b>MANDATORY REVIEW FOR DECLASSIFICATION REQUESTS FILES.</b> Files created in response to requests for information under the mandatory review provisions of executive order (E.O.) 12356 consisting of the original request, a copy of the reply thereto, and all related supporting files, which may include the official file copy of requested records or a copy thereof.		BLM does not maintain files related to EO 12356 that are described in GRS 14/31
32	<b>MANDATORY REVIEW FOR DECLASSIFICATION APPEALS FILES.</b> Files created in responding to administrative appeals under the mandatory review provisions of E.O. 12356 and its predecessors for release of information denied by the agency. Files consist of the appellant's letter, a copy of the reply thereto, and related supporting documents, which may include the official file copy of records under appeal or copy thereof.		BLM does not maintain files related to EO 12356 that are described in GRS 14/32.
33	<b>MANDATORY REVIEW FOR DECLASSIFICATION CONTROL FILES.</b> Files maintained for control purposes in responding to requests, including registers and similar records listing date, nature, and purpose of request and name and address of requester.		BLM does not maintain files related to EO 12356 that are described in GRS 14/33.
34	<b>MANDATORY REVIEW FOR DECLASSIFICATION REPORTS FILES.</b> Reports relating to agency implementation of the mandatory review provisions of the current Executive Order on classified national security information, including annual reports submitted to the Information Security Oversight Office.		BLM does not maintain files related to EO 12356 that are described in GRS 14/34.

35	<b>MANDATORY REVIEW FOR DECLASSIFICATION ADMINISTRATIVE FILES.</b> Records relating to the general agency implementation of the mandatory review provisions of the current Executive Order on classified national security information, including notices, memoranda, correspondence, and related records.		BLM does not maintain files related to EO 12356 that are described in GRS 14/35.
36	<b>ERRONEOUS RELEASE FILES [1278].</b> Files re. the inadvertent release of privileged information to unauthorized parties, containing information the disclosure of which would constitute an unwarranted invasion of personal privacy. Files contain requests for information, copies of replies thereto, and all related supporting documents, and may include the official copy of records requested or copies thereof. Confidentiality: Non-public record category 3; Privacy Act System Interior/OS-57. Location: All.		
	a.	Files That Include the Official File Copy of the Released Records.	TEMPORARY. Follow the disposition instructions approved for the released official file copy, or destroy 6 years after the erroneous release, whichever is later. GRS 14/36a.
	b.	Files That Do Not Include the Official File Copy of the Released Records.	TEMPORARY. Destroy 6 years after erroneous release. GRS 14/36b.
37	<b>NEWS RELEASES, SPEECHES, COMMENTS MASTER FILES [1120].</b> Record copies of official BLM news releases, speeches, addresses, comments and other public issuances, maintained by office of origin. Confidentiality: Public record category 1. Location: All. Exclusions: Reference copies (Schedule 14/3).		PERMANENT. Cutoff EOFY. Transfer to FRC when 5 years old. FRC transfers to NARA in 5-year blocks when most recent records are 20 years old (e.g., transfer FY80-84 in FY2005). Transfer audiovisual records to NARA in accordance with GRS 21. NARA Job NC1-49-85-2, 14/1.

<b>CROSS-REFERENCES:</b>		
<b>INFORMATION SERVICES NONRECORD WORKING FILES, BACKGROUND MATERIALS, AND REFERENCES.</b> Working copies of official documents; notes, drafts, preliminary or interim data used to prepare final documents; other work papers and nonrecord copies of documents re. information services.	See Schedule 23/21.	
<b>INFORMATION SERVICES NONRECORD MICROFORM.</b>	See Schedule 23/22.	
<b>INFORMATION SERVICES TRACKING AND CONTROL FILES.</b> Hard copy and electronic logs, registers, or other tracking and control files used to control or document the status of information services records. Exclusions: FOIA control files (Schedule 14/13) and Privacy Act control files (Schedule 14/24).	See Schedule 23/8.	
<b>INFORMATION SERVICES FINDING AIDS.</b> Indexes, lists, registers, and other finding aids related to information services records, excluding records that contain abstracts or other information that can be used as an information source apart from the related records. Exclusions: Publications indexes and checklists (Schedule 14/6).	See Schedule 23/9.	
<b>INFORMATION SERVICES ADMINISTRATIVE DATA BASES.</b>	See Schedules 20/3 and 23/3.	

BLM Manual Rel. 1-####

Supersedes Rel. 1-1645###/###/##

**draft**

# **BLM FREEDOM OF INFORMATION ACT HANDBOOK**

**H-1278-1**

**Note: Current regulations/procedures pertaining to the EFOIA amendments are not included in this draft handbook.**

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**H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK**  
**Chapter 1 - Introduction**

**CHAPTER I - INTRODUCTION**

**A. Purpose of this Handbook.**

This Handbook supplements the requirements prescribed by Bureau of Land Management (BLM) Manual Section 1278 - External Access to BLM Information. This Handbook is a more detailed explanation of the statutory requirements in responding to a request for information under the Freedom of Information Act (FOIA), which is the primary Federal law (5 U.S.C. 552) on openness in Government.

The Handbook identifies the procedural requirements (such as time limits, fees, fee waivers, exemption reviews, appeal rights, etc.) under the FOIA in responding:

1. To FOIA requests for BLM information which may be protected by statute or Executive Order; and
2. To requests which do not come in under the FOIA for which BLM should reply citing the FOIA and applying FOIA procedures, because the information is sensitive and one of the nine FOIA exemptions apply.

It is BLM's policy to make records available to the public to the greatest extent possible in keeping with the spirit of the FOIA while at the same time preserving essential confidentiality, protecting sensitive information when appropriate under the law, and when sound grounds exist for invoking FOIA exemptions.

**These guidelines are relevant to every BLM employee responding to any request for Bureau information regardless of whether the requester cites the FOIA or not.**

**B. The Freedom of Information Act.**

The Freedom of Information Act, 5 U.S.C. 552 requires Federal agencies to disclose agency records to the public, unless the records are protected by one or more of the FOIA's nine exemptions, and for which sound grounds exists for withholding the information. The Act applies to agency records in any form (e.g., hard copy, microfilm, electronic files, E-Mail, photographic or audiovisual records).

**C. Guidance.**

This Handbook is used in conjunction with the following statutes, guidelines and regulations:

1. FOIA (5 U.S.C. 552);

2. The Departmental FOIA Handbook (383 DM 15);
3. The Departmental FOIA regulations (43 CFR Part 2), Subpart A and B;
- 4 The Department of Justice FOIA Updates, and the latest FOIA Case List published by the Department of Justice;
5. OMB Circular A-130, Revision Notice; 58 FR 36068;
6. The Privacy Act, (5 U.S.C. 552a);
7. The Paperwork Reduction Act of 1989, 44 U.S.C. Ch. 35;
8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);
9. The National Historic Preservation Act Amendments of 1980, 16 U.S.C. 470w-3;
10. The Computer Security Act of 1987 (P.L. 100-235);

**H-1278-1 - FREEDOM OF INFORMATION ACT HANDBOOK**  
**Chapter 1 - Introduction**

**D. Relationship with other BLM Manual Sections.**

This Handbook will cover information access procedures that are related specifically to processing FOIA requests, or responding to requests for sensitive information when the FOIA is not cited in the request. BLM policy was provided in Manual Section 1278. Other Manual Sections or Handbooks addressing information access areas are:

1. 1270 - Records Administration;
2. H-1270-1 - Electronic Records Administration;
3. 1270-2 - Cost Recovery;
4. 1271 - Information Access Center;
5. 1278 - External Access to BLM Information; and
6. 1220 - Records and Information Management

**E. Relationship to the Privacy Act.**

If an individual requests information on himself/herself that is contained in a Privacy Act system of records and cites only the FOIA, the request should also be processed under both the FOIA and the Privacy Act, so that the individual is granted the greatest access possible.

1. Procedures when an individual requests records on themselves:

- a. If the Privacy Act does not exempt the information from disclosure (the exemption must be published in a Bureau regulation), then the person should receive access to his Privacy Act records.

- b. If a Privacy Act exemption applies, a FOIA exemption must also apply to withhold the information from the individual under whom the Records System is filed.

- c. An agency must be able to invoke BOTH the Privacy Act and the FOIA in order to withhold the information from the individual under whom the Records System is filed.

2. Procedures when a third party requests records from a privacy system about another individual:

- a. If the third party requesting information on another individual falls under one of the "exceptions" listed by the Privacy Act, then it is not required that the Bureau obtain consent from the subject of the file to disclose the information. If an exception does not apply to the information in the System of Records in question, then consent to the Bureau must be provided in writing by the subject of the files for information not exempt under the FOIA in order for that information to be released to a third party.

b. If either a FOIA exemption, or Privacy Act exemption can be applied to any of the information requested, then the information must be withheld.

**F. Congressional FOIA Requests.**

FOIA requests from Members of Congress which are not official committee or subcommittee requests are processed as a requests from "any person" under the FOIA, and do not trigger the special access rule of subsection (d) of the FOIA. If a FOIA request is received from a Member of Congress which is on behalf of Congress through a legislative committee or subcommittee, the request falls within subsection 5 U.S.C. 552(d) of the FOIA, and only a specially authorized claim of executive privilege can be applied to justify withholding information. Refer to BLM Manual - External Access to BLM Information, Section 1278.4 for appropriate procedures.

**G. FOIA Requests Which Include Records Originated from the White House:**

In processing FOIA requests, agencies searching for responsive records occasionally find White House-originated records (or records containing White House-originated information) that are located in their files. The Department issued the following guidance on handling information responsive to a FOIA request in this instance:

1. Contact the Departmental FOIA Officer;
2. The DOI FOIA Officer will consult with the White House on responsive records; and
3. The Department will then be responsible for responding to the FOIA requester once the consultation process has been completed.

**H. Requests for Information Involving Inspector General Investigations:**

Some information responsive to a FOIA request may include information which originated because of an Office of Inspector General (OIG) investigation. The Department of Interior OIG has requested that if a request involves IG investigations and background material to do the following:

1. Requests for OIG reports should be referred to the OIG as soon as possible;
2. If the Bureau originated the background information (not report) the Bureau will respond to the FOIA requester, but after consultation with the IG; and
3. If the IG investigates the activity of the Bureau (and not a third party at the request of the Bureau), then the IG would review documents for a FOIA request, and with consultation with the Bureau.

**I. FOIA Requests from Other Federal Agencies.**

The FOIA does not apply to other Federal agencies. Since the FOIA is not intended for other Government agencies to use as access to information from another agency, BLM should encourage another agency to develop an instrument such as an interagency agreement, or data share agreement (see Manual Section

1278.6 on Agreements to Share Data). These documents are used to purchase or exchange data between agencies when there is an interest in obtaining Bureau information on more than one occasion, or on an ongoing basis.

#### **J. Other Special Requests for BLM Information.**

BLM Manual - External Access to BLM Information Section 1278.5 provides guidance on the handling Bureau information in special circumstances. Guidance can be found on the following topics:

1. Disclosure of Confidential Information to Other Federal Government Offices;
2. Disclosure to State or Local Agencies;
3. Court Orders to Produce Documents; and
4. Requests for Equal Employment Opportunity Documents.

#### **K. The FOIA and Agreements to Share Data.**

An instrument to share data shall not be used when the arrangement with the other party can be handled using standard BLM operating procedures such as the BLM information access centers or external access procedures that are available to all external entities (such as under the FOIA). See BLM Manual Section 1278.6 - Agreements to Share Data.

When sensitive information is received from State and local sources in agreements to share data, BLM can not agree to maintain the confidentiality of this information except to the extent that it is permitted under the FOIA. BLM will not share or exchange records/data that are either involved in litigation; or covered by a Privacy Act System notice that precludes disclosure. Any data sharing agreements involving online access should be reviewed by the designated security officer, and FOIA Coordinator, or BLM FOIA Officer.

#### **L. Relationship to BLM Records Access Categories.**

Records Access Categories were developed by BLM as an attempt to make records more accessible to the public, and facilitate Bureau responses for information, while at the same time protecting sensitive information.

Although the FOIA and the Privacy Act are only required to be cited for non-public information (Category 3, and portions of some Category 1 & 2 files for which sensitive information is kept segregated from the public information), the public may choose to cite the FOIA for public information as well which may be accessed in information centers (fee waiver and reduction of fees are some reasons why).

The procedures and guidance provided in this handbook also applies to these requests for public records which cite the FOIA. Refer to Manual Section 1278.2 - Access to BLM Public Records.

**1. The following are BLM Records Access Categories:**

**a. Public Records - Category 1:** Some files may have sensitive information which are required to be marked, and separated from the releasable portions when requested by the public. Requests for this sensitive segregated information must cite the FOIA, and responses processed under the FOIA. Release of sensitive information will be determined following appropriate FOIA exemption review.

In cases where it would be easier and less costly for the FOIA requester to access Bureau public records without citing the FOIA, BLM may notify the requester and suggest that they formally withdraw the FOIA request. However, BLM must respond using FOIA procedures unless the FOIA requester has provided approval in writing for withholding the original FOIA request.

**b. Discretionary Records - Category 2** (Electronic Records and Outputs and State-specific information determined releasable to the public):

The records placed in this Discretionary Records Category are records which BLM has chosen to make available to the public at a cost (as opposed to the free for view records in Category 1). A FOIA request is not required to access the public information made available by the states.

**c. Non-Public Records - Category 3** (Limited Access Records). These records include all records not designated in publicly available records categories (see Manual Section 1278.3 - BLM Non-Public Information):

If requests are made for information in this category, and the information is considered exempt under one of the nine FOIA exemptions or require Privacy Act procedures, and the FOIA or Privacy Act have not been cited, the BLM employee handling the request must apply FOIA procedures as outlined in this Handbook. See sample #12 for sample language indicating to the requester that the FOIA is being applied to a request for information which is exempt under the FOIA.

**M. Requests for Databases and Disclaimer Statements.**

Whether or not a FOIA request is made for electronic data, the Bureau requires that a disclaimer label be placed on electronic records, or printouts from databases that are provided to anyone outside the Bureau.

Disclaimer statements should be provided with the electronic tape, or marked on the first page of each hardcopy printout. Refer to Sample language #30.

1. Disclaimer labels for Record Access Categories 1 and 2 should read:

"NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT FOR USE OF THE DATA FOR PURPOSES NOT INTENDED BY THE BUREAU OF LAND MANAGEMENT"

2. Disclaimer labels for Record Access Category 3 should read:

"NO WARRANTY IS MADE BY THE BUREAU OF LAND MANAGEMENT TO THE ACCURACY, RELIABILITY, OR COMPLETENESS OF THESE DATA FOR INDIVIDUAL USE OR AGGREGATED USE WITH OTHER DATA"

## CHAPTER II - ADMINISTRATIVE REQUIREMENTS UNDER THE FOIA

### A. FOIA Procedures.

Department of the Interior (DOI) guidelines in implementing the FOIA can be found at 43 CFR Part 2, Subpart B, Department Manual Section 383 DM 15, and BLM policy in Manual Section 1278. This chapter identifies those administrative requirements for the submission of a FOIA request, and appropriate response to those requests.

If a verbal request is made for information which is considered sensitive and non-public, the requester should be asked to submit the request in writing, citing the FOIA, and including the elements of a FOIA request in section B below.

When a written request is received which does not cite the FOIA, and the request is for information which is sensitive and non-public, the request should be treated as a FOIA request, and the guidelines set forth in this Handbook will apply to preparing the response.

### B. Identifying a FOIA Request.

An incoming FOIA request should include the following information (43 CFR 2.14):

1. It should be in writing and specifically cite the Act.

2. Must reasonably describe the records requested. Sufficient information must be provided so that an employee familiar with the subject area of the request can locate the record with a reasonable amount of effort. The office responsible for the records should contact the FOIA requester for clarification (by phone or in writing - See sample language #1 for a clarifying a vague request, and sample language #2 for clarifying an overly broad request).

Clarification may be provided by the FOIA requester in writing, or by telephone. Documentation on this action should be kept with the FOIA file and referred to in the response.

The BLM employee who is familiar with the requested documents, and how they are retrieved or stored, may be able to explain to the requester how records are maintained, and provide assistance in clarifying a vague request, or narrowing a broad request.

Until the questions above are resolved, the request may be deemed not to have been received in proper form and the 10-working day time limit is not started until adequate clarification is provided.



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**3. Must specify the fee category, address the maximum amount of fees that the requester is willing to pay, or include a request for a fee waiver (see 43 CFR 2.20, and Manual Section 1278).**

If the above fee information is not provided by a requester, or is too vague or broad and requires clarification, the request may be deemed not to have been received in proper form and the 10-working day time limit is not started until adequate clarification is provided.

Offices handling requests are encouraged to communicate with the requester promptly and obtain the required fee information in writing in order to expedite the request processing. The clarification should be placed in the FOIA case file.

Refer to sample language #3 on fee waiver clarification; sample language #14 for willingness to pay fees when under \$250; and sample language #17 when fees exceed \$250.

**C. Creation of a Record.**

A request may seek only records that are in existence at the time the request is received (43 CFR 2.14(c)). See sample language #19 when records do not exist.

**D. Ongoing FOIA Requests:**

The FOIA does not require an agency to provide records that will be created or finalized after the date on which the FOIA is received. Therefore, there are no "ongoing" FOIA requests, and requesters for information which has not yet been created should be notified that the record is not yet available, and another FOIA should be sent when it is ready. See sample language #18 for responses when records are not yet created or compiled. Appeal language should be provided to the requester as well.

**E. Annual Report.**

The FOIA requires each Federal agency to compile and submit to the Congress, on or before March 1, a report of its FOIA activities during the previous calendar year. The Bureau FOIA Officer will collect report information from each respective State Office, Service Center, and from Fire and Aviation, and provide that report to the Department FOIA Officer on or before February 1.

The FOIA specifies certain matters that the report must cover. Illustration 2

is a sample of the FOIA annual report sent to the DOI FOIA Officer. The DOI FOIA Officer then combines all DOI Bureau reports and submits one report to Congress. Illustration 1 identifies the type of log which if kept with the FOIA file will assist in preparing the annual report.

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Example of Data Collection Log For The FOIA Annual Report

(INFORMATION WILL BE PROVIDED BY THE FOIA COORDINATOR AND OFFICE RESPONSIBLE FOR THE RECORDS:

I. (Action Office Code) for FOIA REQUEST No. (FOIA CONTROL #) from  
(Name of FOIA Requester).

II. Request Denied?: NO \_\_\_\_ Yes \_\_\_\_\* Partially \_\_\_\_ \*  
FOIA Exemption(s) Invoked \_\_\_\_  
If Exemption 3 what statute was cited: \_\_\_\_  
Partial/Full denials (fee waivers or information) must be reviewed with the  
Solicitor. Solicitor who reviewed documents and letter was: \_\_\_\_

\_\_\_\_\_  
\* Harm Statements for Discretionary Disclosure Exemption which were  
Applied Are Attached

III. Request not fully complied with because:

- G Can't identify records
- G Requester refused to pay fees
- G No records can be located
- G Request was withdrawn
- G Referred to another: \_\_\_\_Agency \_\_\_\_Bureau
- G Information provided previously
- G Would require creating a record
- G Other: (fugitive of the law, protected by copyright law, etc.)

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(Cont'd)

IV. Extension taken to:

- G Get records from another source
- G Search & examine large amounts of records
- G Consult with:
  - G Another Agency
  - G Other component in Interior
  - G Submitter of the information

V. Following guidelines in 43 CFR Part 2, Appendix 1, and Appendix to BLM Handbook on Cost Recovery, H-1270-3, the total costs are: \$ \_\_\_\_\_  
(list below).

- # Clerical Search Time @ \$2.30/quarter hr.: \_\_\_\_\_
- # Clerical Review Time @ \$2.30/quarter hr.: \_\_\_\_\_
- # Managerial Search Time @ \$4.65/quarter hr.: \_\_\_\_\_
- # Managerial Review Time @ \$4.65/quarter hr.: \_\_\_\_\_
- # Photocopy @ \$.13/page: \_\_\_\_\_
- # Other Reproduction (Actual Costs): \_\_\_\_\_
- # Certifications @ \$ .25/each \_\_\_\_\_
- # Electronic Records @ Bureau-wide Rates: \_\_\_\_\_
- # Postage (Exceeding 1st Class): \_\_\_\_\_

# Request falls into this fee category:

- G Other           G Commercial Use
- G News Media   G Educational & Noncommercial Scientific Institute

G Costs minus fee deductions under 43 CFR 2.20 are: \$ \_\_\_\_\_

VI. Date Reply Mailed: \_\_\_\_\_

VII. Certified Mail Receipt #: \_\_\_\_\_

RESPONSE MUST BE MAILED BY \_\_\_\_\_

RETURN THIS OFFICIAL CASE FILE, INCLUDING BACKGROUND MATERIAL AND FILE COPIES OF  
THE RESPONSE TO \_\_\_\_\_, STATE RECORDS ADMINISTRATOR.

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Sample of a Completed FOIA Annual Report

DEPARTMENT OF THE INTERIOR  
Freedom of Information Act 1992 Annual Report  
(January 1 - December 31, 1993)

Bureau/Office Bureau of Land Management  
Reporting Official Bureau FOIA Officer  
Telephone No. (202) 452-5013  
Date January 28, 1994

1. Requests received. 1213  
2. Denials and noncompliance.

a. Number of requests fully or partially denied: 93  
b. Number of times each exemption under Subsection  
552(b) was invoked in making the denial:\*

<u>Exemption</u>	<u>Times invoked</u>
1	<u>0</u>
2	<u>0</u>
3	<u>5</u>
4	<u>21</u>
5	<u>25</u>
6	<u>33</u>
7	<u>15</u>
8	<u>0</u>
9	<u>4</u>

\* In some cases, more than one exemption may be cited in denying a single request.

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**Sample of a Completed FOIA Annual Report**

c. List of statutes invoked under the use of Exemption 3:

- 3 Archaeological Resources Protection Act, 1979 (CO)(NV)(NM)
- 1 National Historic Preservation Act of 1966, Sections 3&4 (NV)
- 1 Federal Coal Leasing Amendments of 1976 (NM)
- 1 Indian Mineral Development Act [I] (UT)

d. List of names and titles of officials denying records and  
the number of instances for each official: \*

<u>Name and Title</u>	<u>No. of Instances</u>
Martha Hahn	Associate State Director/Colorado State Office 1
Bob Moore	State Director/Colorado State Office 2
David Strunk	Acting State Director/Colorado State Office 1
Lester Rosenkrance	State Director/Arizona State Office 4
Bruce Conrad	Associate State Director/Arizona State Office 6
Ted Bingham	Associate State Director/Arizona State Office 1
Marilyn Johnson	Acting State Director/Arizona State Office 1
Pieter J. Van Zanden	Acting State Director/Idaho State Office 2
Delmar D. Vail	State Director/Idaho State Office 4
Edward Spang	State Director/Alaska State Office 4
Marvin LeNoue	Denver Service Center Director 2

.....ETCETERA

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Sample of a Completed FOIA Annual Report

e.	Number of requests not fully complied with (Other authority):	
	(1) Requester's failure to adequately identify records.	<u>28</u>
	(2) Refusal to pay fees.	<u>64</u>
	(3) Nonpossession of records by Interior. (Records do not exist).	<u>128</u>
	(4) Referred to another agency.	<u>15</u>
	(5) Request withdrawn.	<u>38</u>
	(6) Request referred to another bureau.	<u>18</u>
	(7) Requested information previously furnished.	<u>48</u>
	(8) Other (explanation).	<u>14</u>
3.	<u>Fees.</u>	
	Total amount of fees collected from the public.	<u>\$24,714</u> *
4.	<u>Costs.</u>	
	Total cost to administer the FOIA.	<u>\$460,404</u>

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**Chapter 2 - Administrative Requirements Under the FOIA**

5. Number of time extensions taken and the reason for each.
- |  |           |
|--|-----------|
| a. The need to search for and collect the requested records from another source. | <u>16</u> |
| b. The need to search for, collect, and examine a voluminous amount of records.  | <u>58</u> |
| c. Consultation with another agency, or other components in Interior.            | <u>33</u> |
6. Availability of records.  
List new categories of records, or segregable portions thereof, now being released. 0
- 

**Tips in Preparing the Annual Report**

1. All FOIA Coordinators are required to keep a log of FOIA fees collected. The Department may request that BLM submit a copy of their log during the reporting process; therefore, an accurate log of fees collected should be maintained by each reporting office.
2. All reporting offices should compare previous year figures with current reporting year figures. Any change (+ or -) of \$5,000 or more requires a written justification explaining the reason for such change.
3. Only one denying official per denial should be reported under item 2d of the report. Solicitors should not be listed as the denying official. The denying official is the person authorized to sign FOIA denials or any officials whom they have designated in writing. Each denying official's location should also be identified.



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4. A major concern of the Departmental FOIA Officer is the COST TO ADMINISTER THE FOIA, the following areas have been identified as costs that should be included:
  - a. A percentage of your clerical support person(s) salary should be included in this calculation, along with all persons directly responsible for administering the FOIA, e.g., Specialists/Coordinators 75-100% of salary, Secretaries/Clerk Typists 30-50% of salary, FOIA Officer/Supervisor roughly 25% of salary, and Program Specialists at a combined 100% of one GS-13's salary (these percentages will vary from office to office based on individual activities);
  - b. All costs for FOIA training/travel should be included;
  - c. All costs waived due to the \$15 threshold should be included; and
  - d. All costs that were not factored in because of "fee category", e.g., news media (search time), should also be included in the cost to administer FOIA.

**H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK**  
**Chapter 3 - Determining What is Exempt from Disclosure**

**CHAPTER 3 - DETERMINING WHAT IS EXEMPT FROM DISCLOSURE**

**A. Introduction.**

The elements required in preparing a response which withholds information under a FOIA exemption are discussed in Chapter 4. This Chapter provides guidelines on understanding the FOIA exemptions, the recent case laws which help to clarify use of the exemptions, and how to review BLM information to determine if a FOIA exemption applies. Further guidance may be found in Department of Justice's yearly Freedom of Information Act Guide & Privacy Act Overview, BLM Manual Section 1278.3, the Department's Handbook at 383 DM 15, and 43 CFR 2.13(c).

**1. Some Steps Involved:**

- a. Pull all documents responsive to the FOIA request;
- b. Examine them for information which have originated with another Government agency, or Departmental bureau or office. (See sample language #7 for transferring information to another agency for review);
- c. Identify under which Records Access Category they fall. Category 3 indicates that exempt information may be included in the document, and the reasons for invoking an exemption may already be documented. Category 1 & 2 records have already been reviewed for exempt information, and the portions which are exempt should be clearly marked, segregated in the file, and not provided to the public for view under routine access procedures.

(Note: If exempt information has been made available for public viewing in a reading room, then the BLM likely has waived its ability to assert the exemption in responding to a FOIA request).

- d. Review the FOIA Exemption Checklist against the material at hand, and determine whether it is necessary to make a sound grounds determination before invoking an exemption to withhold the material.
- e. Make a further analysis using the guidelines in this chapter;
- f. Consult with the FOIA Coordinator when there is a question;
- g. Make a list of documents proposed for withholding; and
- h. Consult with the office's designated FOIA attorney to determine if the documents proposed for withholding fall under a FOIA exemption.

**B. Reasons Access May be Denied Under the FOIA.**

The 9 FOIA exemptions protect against disclosure of information that, for example, would harm the privacy of individuals, proprietary interests of businesses, functioning of the Government, and law enforcement investigations. See 5 U.S.C. 552(b), and 43 CFR 2.13(c) for a listing of the exemptions.

When a record contains some information that meets the legal definition of the FOIA exemption, only that portion of the record that applies to the exemption may be withheld. The FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. However, certain exemptions such as the attorney-work product privilege of exemption 5 will protect information in its entirety.

### **C. Identifying Harm When Citing Discretionary Disclosure Exemptions.**

The White House and Attorney General recently have required the following considerations. From the list of "discretionary disclosure" exemptions below, the Bureau may apply the exemptions to withhold information only when the agency reasonably foresee that disclosure would be harmful to the interest protected by the exemption.

To invoke these exemptions the Department has required Departmental agencies to develop a statement identifying what harm would result if the information were released, (see IM 94-441, dated July 27, 1994). A sample of a harm statement is in Illustration 1 of this Chapter, and a sample of an affidavit developed for BLM to document attorney review is in Illustration 1 of this Chapter.

1. "Low" Exemption 2;
2. Exemption 5;
3. Exemption 6 **(To the extent that the information is not covered by the Privacy Act);**
4. Exemption 7(C) & 7(D) **(To the extent the information is not covered by the Privacy Act);**
5. Exemption 7(E);
6. Exemption 8
7. Exemption 9

The FOIA Coordinator will ensure that the document identifying foreseeable harm, and Solicitor review is completed and maintained in the FOIA case file for use if a FOIA appeal is filed with the Department FOIA Appeals Officer. In the response to the FOIA requester, an identification of harm **CHECK DOI POLICY - Stephanie says its wrong** must be included with the FOIA exemption cite for the information being withheld. See sample language #21 for an example of harm statements.

### **D. Preparing a Response Denying Information.**

The office responsible for creating and/or maintaining the records shall provide the FOIA Coordinator with feedback on what information might be exempt under the FOIA. The FOIA Coordinator will review the recommendations for withholding documents, and request that the designated FOIA attorney review the response, any documents which are proposed for withholding and any harm statements.

The proposed response sent to the designated FOIA attorney shall also include a list of the documents being withheld. The list should include the following information: Date, subject, who the letter or memo is to and from or when the information was prepared, and the FOIA exemption cited (See sample language #20, and #21). This list, and a copy of the withheld documents, redacted and unredacted will be maintained with the FOIA case file for use in a possible appeal by the requester, and to ensure consistent treatment of the same documents by other requesters.

If a list is too burdensome, a copy of the first page of each document may be substituted.

**H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK**  
**Chapter 3 - Determining What is Exempt from Disclosure**

**E. The Nine FOIA Exemptions:**

The following are the nine exemptions under the FOIA which serve as a basis for withholding information. The Department of Justice provides an annual Freedom of Information Act Guide & Privacy Act Overview explaining the provisions of the FOIA and the Privacy Act, an overview discussing the FOIA's exemptions, and new Court decisions which may influence the analysis for each exemption.

**1. Exemption 1 - Classified Secret Matters of National Defense or Foreign Policy (5 U.S.C.552(b)(1)):**

This protects national security information provided that it has been properly classified in accordance with Executive Order No. 12356 (April 2, 1982).

This protects national security information provided that it has been properly classified in accordance with Executive Order No. 12356 (April 2, 1982). Therefore information may not be classified unless "its disclosure reasonably could be expected to cause damage to the national security."

5 U.S.C. 552(c)(3) is a special record exclusion under the FOIA which applies to certain especially sensitive records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence, counterintelligence or international terrorism matters. Agencies may treat the records as not subject to the requirements of the FOIA, and deny the existence of the information, since the existence of the record is itself a classified fact.

**2. Exemption 2 - Related Solely to the Internal Personnel Rules and Practices of an Agency (5 U.S.C. 552(b)(2)):**

This (discretionary disclosure) exemption covers matters that are related solely to an agency's internal personnel rules and practices.

Recent court decisions have construed "personnel" to refer to a broader meaning than just personnel-related information. Also included would be a wide range of administrative information. In light of the Administration's new policy on, a rationale for harm if the information is released is now required in the analysis for exemption 2. Further discussion on providing sound grounds and identifying what harm would be caused if the information were released will follow at the end of this chapter.

There are two separate classes of documents that fall within Exemption 2.

(1) First, "**Low 2**" covers information relating to personnel rules or internal agency practices is exempt if it is trivial administrative matter of no genuine public interest. A rule governing lunch hours for agency employees is an example. Because of the requirement that sound ground exist for withholding this kind of information, no information is generally withheld using the "low 2" exemption.

(2) Second, "**High 2**", covers more substantial internal administrative matters disclosure of which would risk circumvention of the law or an agency regulation. Law enforcement

proceedings, or crediting plans are examples.

**a. The Test for Exemption 2** is the following:

- (1) The material withheld should fall within the terms of the statutory language as a personnel rule or internal practice of the agency;
- (2) The material should relate to trivial administrative matters of no genuine public interest ("low 2")
- (3) The material would risk circumvention of lawful agency regulation ("high 2"); and
- (4) There should be a harm to Government operations or to the public if the information were released ("high" 2);

**3. Exemption 3 - Matters Specifically Exempted From Disclosure by Statute (5 U.S.C. 552(b)(3)):**

The intention of this exemption is to allow statutes which require or authorize the withholding of confidential information (and to which there was left no discretion on the issue) to remain unaffected by the disclosure mandate of the FOIA. The Privacy Act and the Trade Secrets Act are not Exemption 3 statutes.

**a. The Test for Exemption 3** is the following:

- (1) The statute must require that the matters be withheld from the public in such a manner as to leave no discretion on the issue, and
- (2) The statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. It would also have to be established that the records in question clearly fall within the legal description of the exempting statute.

**b. Examples of Exemption 3 Information:** At present statutes affecting BLM which prohibit release of specific information include the:

- (1) Indian Minerals Development Act of 1982, 25 U.S.C. 2103(c).
- (2) Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. 201(b)(3) and 208-1(b)-(e). et seq.;
- (3) Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh(a);
- (4) National Historic Preservation Act Amendments of 1980, 16 U.S.C. 470w-3; and
- (5) Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301.

**4. Exemption 4 - Trade Secrets and Confidential Business Information Obtained from a Person, and Privileged or Confidential (5 U.S.C. 552(b)(4)):**

The exemption is intended to protect both the interests of commercial entities that submit proprietary information to the Government, and the interests of the Government in receiving continued access to such data.

## H-1278-1 - BLM FREEDOM OF INFORMATION ACT HANDBOOK

### Chapter 3 - Determining What is Exempt from Disclosure

Notification to Submitter of Proprietary Information. The Trade Secrets Act, 18 U.S.C. 1950, makes it unlawful for agency employees to disclose proprietary information filed with an agency and provides penalties for unauthorized disclosure. Similarly, Executive Order (EO) 12600 (June 23, 1987) (see Appendix II), mandated submitter notification when an agency contemplates releasing arguably confidential commercial information that they believe is confidential. See the Department of Interior FOIA Handbook, 383 DM 15, Chapter 3, Illustration 13 for a sample letter on consultation with the submitter regarding commercial information; see Illustration 14 in the Department Handbook for sample language notifying the submitter of the Bureau's intent to release documents; and sample language in Illustration 15 of the Department Handbook on a response to the FOIA requester for release of information over the objection of the submitter of the information.

However, all information that is submitted to BLM must be reviewed by BLM personnel regardless of submitter identification as to confidentiality and a determination made as to its confidentiality before the information can be made available in a BLM information access center, or releasing it in regard to a FOIA request.

Another note: If the information is not "sensitive", i.e., it is published in the company's annual report or is available through the Securities and Exchange Commission, exemption 4 may not be invoked to protect it.

The information in question must fall under one of two categories to proceed further in an exemption 4 analysis. The information must first be either **trade secrets** and/or **commercial or financial information**. If the information is found to be in either of those two groups, then to withhold it must be determined to be **privileged or confidential**. The following explains how to make those determinations.

**Trade secrets** are considered to be: A secret, commercially valuable plan, formula, process or device that is issued for the making, preparing, compounding or processing of trade commodities that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

**Commercial or financial** is information which would relate to business or trade, in which the submitter has a commercial interest. This category of information also must be: (1) Obtained from a person (not generated by the Federal Government), and (2) Privileged or confidential. When determining confidentiality the Bureau must now establish first whether the information is provided because it is "required" for a certain benefit, or provided "voluntarily", because there is a different test for confidentiality for each category.

With regard to commercial or financial information that the submitter is required to provide, the test for confidentiality is determined by whether: (1) Release of the information would impair the Government's ability to obtain similar information in the future; or (2) release would cause substantial harm to the competitive position of the person from whom the information was obtained.

The test for confidentiality of voluntarily submitted information is determined by whether the information can be proven to be routinely treated by the submitter as confidential.

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**a. Summary of Test for Exemption 4:**

- (1) Is the information a trade secret?
- (2) Is it commercial or financial
- (3) Was it obtained from a person (not generated by the Federal Government)?
- (4) Is the commercial or financial information required to be provided, or provided voluntarily?
- (5) If the commercial or financial information is required to be provided to the Government, there are two tests for determining confidentiality: (a) Will release impair the Government's ability to obtain necessary information in the future, or (b) will release cause substantial harm to the competitive position of the submitter?
- (6) If the commercial or financial information is voluntarily provided to the Government, is it customarily kept confidential.

**b. Examples of information withheld under exemption 4:**

- (1) Commercial and financial information received in connection with bids, contracts, or proposals, such as: Assets income, profits, losses, and expenditures.
- (2) Solid mineral information, including production data and royalty statistics.
- (3) Geophysical information - locations of oil and gas well, drilling plans, exploration data, geologic reports.

For more information see the listings in the Departmental FOIA Handbook at 383 DM 15, Section 5.4D(3).

**5. Exemption 5 - Inter-Agency or Intra-Agency Memorandums or Letters Which Would Not Be Available By Law to a Party Other Than an Agency in Litigation With the Agency (5 U.S.C. 552(b)(5)):**

The threshold issue for invoking exemption 5 is whether the document is intra- or inter-agency. Normally this requirement is met by documents generated within the agency. Documents generated by non-Federal sources, however, also may qualify as inter or intra-agency documents. For example, documents created by outside parties functioning as consultants to BLM also may meet this threshold requirement.

As with exemption 2 (low 2), the Department of Justice now requires that if the exemption is invoked, sound grounds for withholding the information must be provided if information is withheld using exemption 5. Further discussion on providing sound grounds and identifying what harm would be caused if the information were released will follow at the end of this chapter.

**The three primary PRIVILEGES incorporated in exemption 5 are the:**

- (1) Deliberative process privilege;
- (2) the attorney work-product privilege; and
- (3) the attorney-client privilege.

**The deliberative process privilege** is designed to protect the quality of the agency's decision-

making process. The purposes of the exemption are:

- (1) Encouraging open, frank discussions on matters of policy between subordinates and superiors;
- (2) Protecting against premature disclosure of proposed policies before they are finally adopted; and
- (3) Protecting against public confusion that might result from disclosure of reasons that were not in fact ultimately the grounds for an agency's action.

As with exemption 2 (low 2) a document may lose its deliberative status if it's contents are adopted without change, formally or informally, as the Bureau's position, and also released previously outside the Executive Branch.

Reasonably segregable factual portions of pre-decisional documents should be released. The factual portion must be released where it can be segregated from the remainder of the document. However, if the manner of selecting or presenting those facts would reveal the deliberative process or if the facts are inextricably intertwined with the decision-making process, the facts may be withheld.

**a. A test for the deliberative privilege** is the following:

- (1) The communication must be pre-decisional (antecedent to the adoption of an agency policy); and
- (2) The communication must be deliberative (a direct part of the decision-making process, i.e. does it make recommendations or express opinions on legal or policy matters?).

**b. Examples of deliberative privilege documents** are a letter from one Government department to another about a joint decision that has not yet been made, or a memorandum from an agency employee to his supervisor describing options for conducting agency business.

The BLM documents that will fall in this category will generally be drafts, working papers, and handwritten notes.

## **6. Exemption 6 - Protects personnel, medical and similar files (of individuals), disclosure of which would constitute a clearly unwarranted invasion of personal privacy.**

Personal privacy interests are protected by two provisions of the FOIA, exemptions 6 and 7(C). The application of 7(C) will be discussed later and is limited to information compiled for law enforcement purposes.

Exemption 6 permits the withholding of information about individuals contained in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy".

It important to note that, to qualify for protection under exemption 6, information must be identified to a specific individual. The exemption normally does not apply to businesses or organizations. However, certain information concerning employees such as their social security numbers, and home addresses, etc. would be withheld.

Further, exemption 6 cannot be invoked to withhold from a requester information pertaining only to himself.

Exemption 6 involves a balancing of interests between an individual's right to privacy and the public's right to Government information, and thus differs from other exemptions. Information will be withheld if an invasion of privacy outweighs a public interest recognized by the FOIA.



Court cases have established standards for viable privacy standards. These are some items to consider to determine privacy interest:

- (1) The threat to privacy must be real vs. speculative;
- (2) The individual had an expectation of privacy; and
- (3) Individuals not corporations or business associations possess protectable privacy interests.

(Note: Sole proprietorships are considered "individuals" and exemption 6 may be invoked to protect their privacy).

The following are items to consider for public interest:

- (1) The burden of proof for public interest is on the FOIA requester;
- (2) The only public interest to be considered is whether the information sheds light on an agency's performance of its statutory duties. Therefore the information must benefit the public overall and not only the requester.

The Supreme Court decision, United States Department of Justice v. Reporters Committee for Freedom of the Press, provided 5 guiding principles that govern the process by which determinations are made under both Exemption 6 and 7(C). These are:

- (1) If the information were "freely available", there would be no reason to invoke the FOIA to obtain access to them;
- (2) The identity of the requesting party has no bearing on the merits of their FOIA request;
- (3) In determining public interest, the purposes for which the request for information is made is not considered;
- (4) The public interest inquiry is only whether the information sheds light on an agency's performance of its statutory duties.

If information is withheld using exemption 6, and the information is not covered by the Privacy Act, Department of Justice guidelines require sound grounds for withholding the information. (Refer to the information at the end of this chapter for further discussion on the requirement).

**a. A test for Exemption 6 is the following:**

- (1) Is the information contained in:
  - (a) personnel files;
  - (b) medical files; or
  - (c) similar files". (The courts have determined "similar files" to mean information which "applies to a particular individual").
- (2) Is a personal privacy interest threatened? The following should be considered:
  - (a) Information must be about a specific individual (vs a group).
  - (b) The information must be identifiable to the individual.
  - (c) Would disclosure be a "clearly unwarranted invasion of personal privacy"?  
Would there be a violation of a viable privacy interest?
  - (d) The threat to privacy must be real rather than speculative; and
  - (e) If there is a privacy interest, is it greater than the public interest?
- (3) What is the assessment of the public interest? The following should be considered:
  - (a) Does the information shed light on an agency's performance of its statutory duties?  
and
  - (b) Disclosure must benefit the public overall and not just the requester.

Once it has been determined that there is an actual privacy interest, it must be weighed against

the public interest. Now it must be determined which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. If the public benefit is weaker than the threat to privacy, the latter will prevail.

**b. Examples of Exemption 6 Privacy Protected Information:**

The kinds of information which have been protected by Exemption 6 are personal in nature, and may contain intimate details of an individual's life which are likely to cause distress or embarrassment. The following are examples of cases where exemption 6 may be invoked for certain information:

- (1) Portions of SF 171s of successful applicants or those currently occupying the position, that do not pertain to background skills and education relevant to the position would be withheld. Copies of 171s of unsuccessful applicants are not releasable;
- (2) Home addresses, personal phone numbers, age, and social security numbers are withholdable under exemption 6 (includes Government as well as non-Government employees);
- (3) Identities of those requesting their own information under the Privacy Act;
- (4) Identities of individuals writing the government expressing personal opinions, and
- (5) Lists of home addresses and home phone numbers of individuals and Government employees are withholdable under exemption 6. However, lists of companies doing business with the Government are releasable.
- (6) Other miscellaneous information that is exempted under exemption 6 are: Health insurance benefits, letters of reprimand, marital status, individuals who provide law enforcement agencies with reports of illegal conduct, allegations of misconduct, background investigations, credit card numbers, financial statement, personal misconduct, performance ratings, medical files, and payroll information.

**7. Exemption 7 - Investigatory records compiled for law enforcement purposes but only to the extent that production of such law enforcement records or information:**

- (A) Could reasonably be expected to interfere with enforcement proceedings;
- (B) Would deprive a person of a right to a fair trial or impartial adjudication;
- (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (D) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis...;
- (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
- (F) Could reasonably be expected to endanger the life or physical safety of any individual.

This exemption protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information meets certain specified criteria.

To withhold information, a foreseeable harm now must be identified. A harm statement is not required if the information is protected under (7)(C) to the extent that it is covered by the Privacy Act or under (7)(D) if it consists of identifying information provided by a source.

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Page 2 of 2    a. A Test for Exemption (7)(A):

- (1) Was the information compiled for law enforcement purposes?
- (2) Is there a law enforcement proceeding pending or prospective; and
- (3) Would release of the information harm the Government case in court or impede any necessary investigation prior to the enforcement proceedings?

The law enforcement proceedings for which this exemption may apply can be criminal actions, civil actions, and regulatory proceedings as well.

Once Exemption (7)(A) applicability ceases with changed circumstances, and agency then may invoke other applicable exemptions.

**b. Examples of Exemption (7)(A) Information:**

- (1) Investigative files; and
- (2) Information which would reveal investigative trends, emphasis, and targeting schemes has been determined to be eligible for protection under this exemption.

The (c)(1) exclusion under the FOIA (5 U.S.C. 552(c)(1)), is a special record exclusion which applies to situations in which the very fact of a criminal investigation's existence is as yet unknown to the subject of the investigation, and disclosure of the existence of the investigation could be expected to interfere with enforcement proceedings. Whenever a request is made which involves access to records described under Exemption (7)(A) and the investigation or proceeding involves a possible violation of criminal law, the agency may treat the records as not subject to the requirements of this section.

**c. A Test for Exemption (7)(B):**

- (1) Was the record compiled for law enforcement purposes?;
- (2) Is a trial or adjudication pending or imminent?; and
- (3) Would disclosure of the material sought interfere with the fairness of those proceedings?

**d. Examples of Exemption (7)(B) Information:**

Exemption (7)(B) is not often applied. One court has ruled that exemption (7)(B) is properly applied where "disclosure through FOIA would furnish access to a document not available under the discovery rules and thus would confer an unfair advantage on one of the parties".

**e. A Test for Exemption (7)(C):**

This is the law enforcement counterpart to Exemption 6. Questions to ask are:

- (1) Were the records compiled for law enforcement purposes?;
- (2) Is there a threatened privacy invasion?;
- (3) Do the privacy interests outweigh the public interests in disclosure?

See the previous test for Exemption 6. (Note: If the information encompassed by exemption (7)(C) is not covered by the Privacy Act, the Bureau must determine whether sound grounds exist to withhold the information).

**f. Examples of Exemption (7)(C) information that would be protected:**

- (1) References to persons who were of "investigatory interest" to a criminal law enforcement agency;
- (2) Names of individuals where disclosure may damage reputations or lead to personal embarrassment or discomfort; and
- (3) Identities of Federal, state, and local law enforcement personnel referenced in investigatory files, when release could subject them to harassment and annoyance in the conduct of their official duties, and in their private lives.

**g. Test for Exemption (7)(D):**

Exemption (7)(D) contains two clauses with different standards for withholding information which are:

- (1) Clause one: Records or information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished the agency information on a confidential basis.

The test for the applicability of clause one of exemption (7)(D) is:

- (a) Was the information compiled for law enforcement purposes? and
- (b) Was the information obtained under an express or implied promise of confidentiality?

- (2) Clause two: All information furnished to law enforcement authorities by confidential sources in the course of criminal or lawful National Security Investigations.

The test for the applicability of clause two of exemption (7)(D) is:

- (a) Was the information compiled in the course of a criminal or lawful National Security investigation? and
- (b) Was the information obtained under an express or implied promise of confidentiality?

**h. Examples of Exemption (7)(D) Information:**

- (1) For clause one of exemption (7)(D), all information that would identify a confidential source, including such obviously identifying information as the informants's name and address and all information that would tend to reveal the source's identity is withholdable.
- (2) For clause two of exemption (7)(D), all information provided by the confidential sources, even information that would not tend to identify the source is withholdable.

**I. A test for Exemption 7(E):**

- (1) Was the information compiled for law enforcement purposes?
- (2) Would release disclose techniques and procedures for law enforcement investigations or purposes? or
- (3) Would release disclose guidelines for investigations or prosecutions that could reasonably be expected to risk circumvention of law?

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**j. Examples of Exemption 7(E) Information:**

Law enforcement manuals, and law enforcement guidelines which correlate to a specific harm to law enforcement efforts. Specific techniques used in a particular case could reveal agency strategy in similar cases.

**k. A Test for Exemption 7(F):**

- (1) Was the information compiled for law enforcement purposes?
- (2) Could release reasonably be expected to endanger the life or physical safety of any individual (not just law enforcement personnel)?

Privacy interest vs public interest is **NOT** a consideration for this exemption as with 7(C).

**l. Examples of Exemption 7(F) Information:**

- (1) Names of special agents and law enforcement personnel (even after retirement);
- (2) Names, identifying data, and aliases of local undercover law enforcement officers;
- (3) Names mentioned in criminal investigation files or mental health reports;

**8. Exemption 8 - Covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions".**

This exemption is not normally applicable to BLM documents. Basically, the two major purposes underlying this exemption are: (1) "to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability"; and (2) "to promote cooperation and communication between employees and examiners".

Even if the information meets the legal requirements of the Exemption, an identification of a foreseeable harm is required in order to withhold the information under this information, as with the other discretionary disclosure exemptions cited in the beginning of this Chapter.

**9. Exemption 9 - Covers "geological and geophysical information and data, including maps, concerning wells."**

This exemption is rarely invoked by BLM. The exemption applies only to well information of a technical or scientific nature. The information in question may also be protected by Exemption 4.

Even if the information meets the legal requirements of the Exemption, an identification of a foreseeable harm is required in order to withhold the information under this information, as with the other discretionary disclosure exemptions cited in the beginning of this Chapter.

Some examples of documents withheld under Exemption 9 are: Number, locations, and depths of proposed drill sites.

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**Statement of Sound Grounds for Withholding**

**A statement of "sound grounds" in withholding information is required for each document (or portion of document) being withheld for FOIA exemptions requiring a sound grounds statement.**

The attached harm statements identify the document(s) (or withholdable portions of documents) being withheld. It is determined that sound grounds exist for withholding the document(s) as identified, and under the exemption(s) indicated.

1. Letter from the District Office to the State Director dated April 16, 1992, providing input on a proposed policy for oil shale mining is being withheld under FOIA Exemption 5 as pre-decisional and deliberative. A final decision has not been made, and release of the information may inhibit frank discussions on matters of policy between subordinates and superiors.

2. Record of phone conversation dated May 6, 1992, between the Washington Office and the State Director who is providing advice to Washington on proposed mining policy. Exempt under FOIA Exemption 5 as pre-decisional and deliberative. Release of this information would harm the quality of agency policy since a final decision on policy has not been made.

3. Law enforcement manuals requested are being withheld under Exemption 2 (high 2), which concerns substantial internal matters, the disclosure of which would risk circumvention of a legal requirement. Release of this information would risk the circumvention of a law or agency regulation.

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(Name)	(Date)
Headquarters or State FOIA Officer or Coordinator	

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(Title)

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(Bureau)

The Solicitor's Office was consulted concerning withholding of this information. The attorney consulted is \_\_\_\_\_.

**Note: The information on sound grounds should be maintained with the FOIA case file for reference if a FOIA Appeal is filed with the Department. This information is not shared with the requester.**

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**Chapter 4 - Processing Initial Freedom of Information Act Requests**

**PROCESSING INITIAL FREEDOM OF INFORMATION ACT REQUESTS**

**A. Introduction.**

All FOIA requests should be coordinated with Bureau FOIA Coordinators. The questions in the checklist (refer to Illustration 1 of this Chapter), are to assist in preparing a FOIA request. Any questions on overall Bureau FOIA policy should be directed to the Bureau FOIA Officer, Washington Officer (WO), IRM Liaison Team.

The Washington Office, Directives Team provides support for responding to WO FOIA correspondence. The State/District/Center FOIA Coordinators will assist the program staffs in their respective offices. The following are steps for processing a FOIA request based on Department regulations, and Bureau policy:

**B. Steps in Processing a FOIA Request.**

1. when a BLM employee other than the FOIA Coordinator receives a FOIA request, or receives a request for information that is covered by one of the 9 FOIA exemptions, they should immediately contact the office FOIA Coordinator to assist in processing the request according to regulations, and to ensure the information is provided for the Annual Report to Congress.
2. The FOIA Coordinator's staff will date stamp, log-in and track the request.
3. The FOIA Coordinator will assign a control number, request necessary records and information from program offices. The FOIA request is hand carried to the program office responsible for action.
4. When records are not located in the WO, the WO FOIA Coordinator will transfer the FOIA request to the appropriate field installation or Federal agency. See sample language #4, 5, 6, or 7 (whichever apply). Due dates will begin to be counted from the date that the request is received by the appropriate BLM facility.
5. When responsive records to a FOIA request reside in more than one Bureau state/Center/WO, the WO FOIA Coordinator will be the contact point to coordinate a FOIA response for the Bureau offices involved in providing information.
6. The program office responsible for the documents requested provides the documents responsive to the FOIA request and other FOIA processing information requested to the FOIA Coordinator by expeditious handling.
7. The program office responsible for action provides within the time frame requested, information on fees incurred for processing the FOIA request, recommendations on fee waivers, and recommendations on FOIA exemptions that may apply to the responsive information.
8. The program office will review documents responsive to the request for releasability. When a decision has been made to withhold documents under a "discretionary disclosure" exemption, they will provide statements identifying what harm there would be if documents were released. The FOIA Coordinator will review questionable documents or those proposed to be withheld, and coordinate any responses withholding documents with the office's designated FOIA attorney

(see Chapter 6, Section C, and sample language #21 for further information on discretionary disclosure and "harm statements"). Any questions involving Bureau FOIA policy on withholding information can also be directed to the Bureau FOIA Officer, WO, IRM Liaison Team.

9. The action office should provide a copy of the documents being released to the requester, and a set of copies for the FOIA Case File. Copies of withheld documents (without deletions) also should be provided for the FOIA Case File which is maintained by the FOIA Coordinator. Exemptions used should be indicated in the margins of the documents where information is deleted. Copies of "harm statements" and affidavits should be filed in the FOIA Case File (see Chapter 3 of this Handbook).

10. The WO FOIA coordinator will prepare the final response for the WO, which will be signed by a designated denying official or Bureau FOIA Officer.

11. Responses prepared in BLM facilities other than the WO, will be signed by authorities designated in Manual Section 1203.

### **C. Basic Elements of a FOIA Response Letter.**

The following is information which should be included when applicable, in drafting a response to a FOIA request:

1. Date of letter; to whom letter is addressed (i.e., BLM Director or Secretary of the Interior); when received; and subject of the letter.
2. Identify if record will be released, and whether it is released in whole or part.
3. Cite FOIA exemption(s) if information is being withheld.
4. Identify the foreseeable harm for releasing information that falls under a discretionary disclosure exemption.
5. If information could legally be withheld under a discretionary disclosure exemption, but is being released because there is no foreseeable harm, let the requester know this.
6. When and where records can be made available if the requester desires to view records before copies are made.
7. Notification of charges, or fee waiver determination.
8. Let the requester know if the Bureau has decided to release information which falls under a discretionary disclosure exemption, for which there would be not harm in releasing the information.
9. Advise the requester of his/her right to appeal when records are denied, do not exist, or cannot be located. The notification of right to appeal is also required for a fee waiver denial.
11. Provide the name and title of persons responsible for denial.
12. Provide the name and phone number of contact person.

### **D. Suggested FOIA Record Keeping.**



All FOIA records should be set up separately and set apart from all other correspondence. Refer to Departmental Manual 383 DM 15, Chapter 2 for maintenance of FOIA, and Privacy Act files.

FOIA files which are retrievable by a personal identifier such as an individual's name constitute a system of records under the Privacy Act. Refer to Departmental Manual 383 DM 1 - 13 for the handling of Privacy Act System of Records, and also BLM Manual Section 1278.07, .82, .83, and .84. See also, Privacy Act Systems notice OS-71, FOIA Request Files System, and OS-69, FOIA Appeal Files.

Each FOIA request should be put into a separate file folder. This is the official file and should contain the following at minimum:

1. The original request letter;
2. The file copy of the response, including a list of all records that were provided to the requester;
3. Any other records concerning the status of the request; follow up correspondence with the requester; or phone conversations, E-Mail, or FAXes that were sent and received;
4. Any interagency communications regarding the request;
5. Copies of the documents being withheld (if too numerous then just a copy of the first page). If portions of documents are withheld the full version marking sections withheld, and exemptions used should be filed in the folder;
6. A copy of the statements identifying sound grounds for withholding information, and affidavits of the Solicitor's review when FOIA discretionary disclosure exemptions are used; and
7. A copy of any appeal filed, and the Department's determination of the appeal.

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CHECKLIST FOR PREPARING A FOIA RESPONSE

1. Was the request made in writing, and did it cite the Act?

Technically it would not be considered a FOIA request. However, even though the Act is not cited, it may be treated as a FOIA if the records requested are considered non-public because a FOIA exemption may apply.

2. Did the request reasonably describe the records requested?

If not, the requester should be contacted to clarify what documents he specifically wants.

3. Did the request specify the fee category and identify how much they are willing to pay?

If the fee category (43 CFR 2.20) is not obvious, and the maximum amount the requester will pay in fees is not provided, contact the requester for this information.

4. Is there a need to clarify whether a fee waiver is justified?

If so, the requester should state in writing how he qualifies for a fee waiver in connection with the particular request. Refer to (43 CFR 2.21(a)) for conditions for justification of a fee waiver.

5. Does the FOIA requester desire a record that is not in existence at the date of the request?

A Federal agency is not required by the FOIA to do research for a requester, to compile or analyze data, or to answer questions. Minor reprogramming of computer programs may be advisable, when the reprogramming is not burdensome or extremely costly to the Bureau.

An agency has the right to choose the format of disclosure where the choice is reasonable under the circumstances. Department regulations provide that where the agency determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the agency may, in its discretion, agree to creation of a new record as an alternate to disclosing existing records.

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6. **Can a response be made within 10-working days as required by law?**

Prepare a letter requesting a 10-day extension, if because of circumstances identified in the 43 CFR, the first 10-day due date can't be met (43 CFR 2.17(c)).

7. **Are there any documents which may contain confidential or sensitive information?**

Identify exempt documents (or portions of documents) according to FOIA statutory exemptions listed in 5 USC 552(b), and provide harm statements when necessary. The response must include information on how the FOIA requester may appeal the denial of any documents withheld under a FOIA exemption. (43 CFR 2.18)

Before making a final determination and response denying a fee waiver or withholding a record, consult with the office's designated FOIA attorney.

8. **Is any of the responsive information provided by a business, associations, or Indian tribes, which may contain confidential commercial or financial information?**

The submitter of that information must be notified that the information may be released. The submitter of those documents has 10 days to review the documents in question and provide sufficient reason why the information is confidential, and should be withheld. See Executive Order 12600 and 43 CFR 2.15(d).

9. **Were any responsive documents originated by another Federal agency?**

Forward a copy of the Bureau's FOIA response, together with the documents which originated from the other agency, to the other Federal agency for review. That agency will be instructed to provide a direct response to the requester, and the requester will be notified of this action in the Bureau's response (See 43 CFR 2.15(b)).

10. **If the FOIA response is not completed within 20 working days (which includes the 10-day extension).**

Prepare a letter of delay, identifying the FOIA requester of their right to file an appeal, and provide appeal language. (Refer to Chapter 3 of this Handbook, and 43 CFR 2.17(3)(f))

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Chapter 5 - Computing Fees**

**CHAPTER 5 - COMPUTING FEES**

**A. Introduction.**

Under the FOIA, an agency is permitted to charge certain fees for processing FOIA requests, which will vary depending on which FOIA fee category the requester falls under. Fees can be recovered only for the actual costs associated with providing access to BLM records (43 USC 1460).

The FOIA request should include a willingness to pay fees, and, if a fee waiver is sought, the requester must provide adequate justification (see 43 CFR 2.21 and Manual Section 1278.36). If the above is not provided in the incoming FOIA, the FOIA coordinator should notify the requester of the estimated fees, and suspend action on the FOIA until clarification has been made (See sample language #3.). The FOIA Coordinator should also give the requester an opportunity to modify his/her request at that time to reduce the fee, and note it in the response letter.

DOI does not charge the requester if the fees are \$15 or less, as the cost of the collection would be greater than the fee. Unless waived, fees for responding to FOIA requests will be charged in accordance with the provisions of 43 CFR 2.20 and 43 CFR Part 2, Appendix A. The Office of Management and Budget issued uniform FOIA fee schedules and guidelines in the March 27, 1987 Federal Register Notice Vol. 52, No. 59. See Appendix III for a copy of the OMB Federal Register Notice.

Documents required to be made public under 5 U.S.C. 552(a)(1) and (a)(2) do not require a FOIA request (i.e. rulemaking that affects the public, organizational information, and statements of policy). Also refer to 43 CFR Part 2, Subpart A. Fees for these documents are covered by normal BLM cost recovery. Refer to Manual Section 1270-3, Cost Recovery for established BLM cost recovery rates and charges. Refer to Illustration 2 for a list of allowable FOIA fee charges.

Even though charges may be waived or reduced according to OMB and DOI guidelines, an accounting of actual costs is necessary for the FOIA Annual Report. See Illustration 1 of Chapter 2 for a sample log which can be retained in the FOIA file and used to compile the Annual Report information.

**B. Aggregating Fees For Multiple FOIA Requests.**

Since fees under \$15 are not charged according to DOI fee guidance (see sample language #16), there are instances when a FOIA requester may file a number of FOIA requests which may fall under this threshold in an attempt to avoid

paying fees. OMB guidelines in Federal Register Notice dated March 27, 1987, Vol. 52, No. 59 (see Appendix III), and recent court cases (Edward P. Atkin v. Equal Employment Opportunity Commission, Civil Action No. 91-2108, U.S. District Court for the District of New Jersey, Dec., 27, 1992) provide the following guidance to determine whether FOIA requests should be aggregated in light of fee charges:

1. It is reasonable to presume that multiple requests for documents related by subject that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees;
2. The requests concerning the same subject may have been made from different requesters. However, there must be a concrete basis that multiple requesters are colluding to avoid paying FOIA fees.

Notify the requester that further requests would be aggregated, and charges assessed based on the aggregated requests. Refer to sample language #28 for language regarding aggregating fees.

#### **C. Considerations in Assessing Fees.**

There are a number of things which affect the amount of fees charged in response to a FOIA request. Some of these are the fee category the FOIA requester falls under and allowable charges for that category; or whether the requester qualifies for a fee waiver. The following sections will explain this further.

#### **D. Determining Requester's Category.**

If a request is processed under the FOIA, one of the first steps in processing the request is to identify which of the four FOIA fee category the requester qualifies (see 43 CFR 2.20). If the category is not clear at the receipt of the FOIA, the FOIA coordinator should notify the requester that more information is needed to make a determination.

When it seems likely that a FOIA requester has sent similar requests to more than one Bureau office, FOIA Coordinators should contact other BLM Coordinators regarding the determination made by the other offices on the requester's fee category to ensure that consistent charges are made of the requester for similar information. (In some cases a Bureau-wide program may be the subject of the FOIA, or it copies to other Bureau offices may be indicated in the incoming).

In cases where FOIA requesters request consideration as non-commercial requesters, the FOIA Coordinator should use discretion in researching the accuracy of this category (for example, checking whether the requester has a tax exempt number, or checking with other FOIA coordinators). As with the above the FOIA Coordinator should use discretion in researching whether an individual is actually representing the group they claim to be involved with for purposes of fee waivers, or requesters categories.

#### **E. FOIA Fee Categories.**

The following are the FOIA fee categories identified in the FOIA. Refer to 43 CFR 2.20 for more detailed definitions, and the Department of Justice FOIA guide for explanations:

**1. Commercial Use Request:** Request from or on behalf of a person who seeks information for "a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is being made".

**2. a. Educational Request:** The requester should be officially a member of the institution, and its purpose should be scholarly.

**b. Non-Commercial Scientific Institution Request:** A requester seeking records under the auspices of an educational institution is to be used in furtherance of scholarly research.

**3. Non-Commercial News Media Request:** This refers to any person actively gathering information of current interest to the public for an organization that is organized and operated to publish or broadcast news to the general public. Excluded from this definition are: Private libraries, private repositories of Government records, or information vendors or data brokers who request use by others. Freelance journalists may be included where they can demonstrate a solid basis for expecting the information disclosed to be published by a news organization.

**4. Other Requesters:** This category applies to all requesters who do not fall within the preceding fee categories.

#### **F. Allowable Fee Charges:**

The following chart indicates the fee payments based upon the requester's category. The three cost components are search time, review time, and duplication.

**1. Search Time:** Refers to the time it takes to reasonably look for responsive material, including a page-by-page, or line-by-line identification of material within documents, whether documents responsive to the request are located or not. In regard to databases, search time refers to the use of computer time to locate and extract requested records.

**2. Review Time:** Refers to the time it takes to examine a document for the purposes of determining whether all or what portions of the document can be disclosed under the FOIA. It does not include the time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions already applied.

Fees for review time may only be assessed on commercial requests. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester.

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Chapter 5 - Computing Fees**

3. **Duplication Fees:** Refer to the chart in Illustration 2 of this Chapter.

**G. Applicable Fees by Category.**

Refer to Illustration 1 of this Chapter, which is a chart to aid in assessing fees.

**H. Schedule of DOI Fees.**

Refer to Illustration 2 to identify allowable rates.

**I. Computerized Records.**

Charges for services in processing requests for records maintained in computerized form will be calculated in accordance with criteria listed in the Department's FOIA Handbook at 383 DM 15, Chapter 4, 43 CFR Part 2, Appendix A, or BLM Cost Recovery Manual if neither of the previous apply.

**J. Collection of FOIA Fees:**

The bill for collection form (Form 1371-22) should be used by BLM offices for billing for collection of fees. See Illustration 3 for sample language. State, District and Resource Area offices will recover costs themselves, and retaining all fees recovered from providing access to records in BLM's copy fee account (5700). The Washington Office will direct billing to:

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

**K. Delinquent Payment:**

The FOIA Coordinator should develop a method to follow up on whether a FOIA requester has actually paid fees charged for information provided, and note it in the FOIA Case File. The FOIA requester can be contacted by telephone or letter to determine whether the original FOIA response was received, and that there are outstanding payments due.

Other BLM FOIA Coordinators should be notified of grossly delinquent payments. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the Bureau may require payment of the full amount owed before that office or other Bureau offices begin processing the new request. If a request has an outstanding balance, BLM shall in most cases deny responding to future requests. Refer to language in Sample 15 of Appendix 1.

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Chapter 5 - Computing Fees

Chart Showing Applicable Fees by Category For FOIA Requests

REQUESTER'S CATEGORY	SEARCH	REVIEW	DUPLICATION
Commercial	Actual direct costs	Actual direct costs	Actual direct costs
Non-commercial (educational or scientific institution or news media	No Charge	No charge	Actual direct costs <u>1</u> /
All others	Actual direct costs <u>2</u> /	No charge	Actual direct costs <u>1</u> /

1/ First 100 pages of paper copies or reasonable equivalent, such as a microfiche containing the equivalent of 100 pages, are copied free.

2/ First 2 hours of manual search time are free. If requested records are maintained in a computerized database, BLM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 16 percent will be added to the hourly cost of operating the central processing unit that contains the record information.



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Chapter 5 - Computing Fees

Chart Showing Fee Costs for FOIA Requests

SERVICE	RATE
Employee Time: Clerical Professional	\$2.30 per 1/4 hr. \$4.65 per 1/4 hr.
Photocopying: (Up to 8 1/2" X 14")	\$ .13 per page
Photocopying: (Over 8 1/2" X 14")	Actual Direct Cost or Reproduction <u>2/</u>
Computer Costs	Actual Direct Cost * (See 383 DM 15.4, 43 CFR Pt.2 Appendix A, or BLM Manual 1270-3 - Cost Recovery) <u>1/</u> <u>2/</u>
Certification	\$ .25 per certificate
Supplies and Other Materials	Actual Direct Cost (See *) <u>2/</u>
Documents Requiring Special Handling	Actual Direct Cost (See *) <u>2/</u>
Other Than First-Class Postage	Mailing Charges are Added for Special Mailing

1/ Requesters entitled to the first 2 hours of manual search time for free, when records are maintained in a computerized database, BLM will use the following formula, suggested by OMB, to provide the equivalent of 2 hours manual search time free before charging for computer search time: The operator's hourly salary plus 16 percent will be added to the hourly cost of operating the central processing unit that contains the record information.

2/ Requesters entitled to the first 100 pages of copies free, will not be charged for the equivalent of 100 pages at \$ .13/page or \$13.00.

**H-1278-1 - BLM HANDBOOK ON ADMINISTRATION OF FOIA**  
**Chapter 6 - Fee Waivers**

**A. Introduction.**

The FOIA Coordinator will provide guidance to management in making a fee waiver determination according to the analysis provided by the Department of Justice below. (Also see 43 CFR 2.21 (a), and DOI FOIA Handbook, 383 DM 15, Section 4.10)

Each analysis must be done on a case-by-case basis, regardless of whether a FOIA requester has requested a fee waiver in the past, or similar information was provided without a fee waiver. Other circumstances such as the type of records requested, or the category of the requester is identified may affect the outcome of an analysis.

It is important that the Bureau be consistent in its analysis for fee waivers from one office to another to avoid being arbitrary.

If more information concerning justification of a fee waiver is required, the FOIA Coordinator should contact the FOIA requester as soon as possible to request further information. BLM will not start processing the request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment.

**B. Fee Waiver Standards.** In 1987 the FOIA Reform Act established new fee waiver guidelines setting forth specific criteria, for Federal agencies to apply in determining whether the public interest warranted a waiver or reduction of fees.

In order to determine whether the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of Government operations or activities, agencies should consider the following four standards:

1. The subject matter must specifically concern identifiable "operations or activities of the Government";
2. The disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.

Courts have held that requests for information already in the public domain, either in a duplicative or a substantially identical form, may not warrant a fee waiver when the disclosure would not be likely to contribute to an understanding of Government operations or activities when nothing new would be added to the existing public record;

3. The disclosure must contribute to the understanding of the public at large as opposed to the individual requester, or a narrow segment of interested persons; and

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4. Disclosure must contribute **significantly** to public understanding of Government's operations or activities. The level of public understanding must be likely to be enhanced by the disclosure to a significant extent.

Please note that such a determination must be an objective one. Agencies are not permitted to make separate value judgments as to whether any information that would in fact contribute significantly to public understanding of Government operations or activities is important enough to be made public.

Once the "public interest" requirement for a fee waiver has been met above. The following should be considered:

1. The Bureau must determine whether the request involves any commercial interest of the requester which would be furthered by disclosure. A commercial interest would further a commercial, trade or profit interest as those terms are commonly understood; and

2. The Bureau must then balance the requester's commercial interest against the identified public interest in disclosure and determine which interest is "primary".

It is important to note that the burden is on the requester to show that he/she meets all the criteria for a fee waiver. The BLM, however, should give the requester the opportunity to show how he/she qualifies for a fee waiver if the requester has not made a sufficient showing in the initial request.

### **C. Fee Waiver and Public Information.**

If a requester asks for a fee waiver, which is information routinely accessible to the public in public rooms, or provided to the public at a BLM office, BLM must process these fee waiver requests using the same principles discussed in Parts A and B. In other words, these requests must be decided and reviewed on a case-by-case basis; the mere fact that the documents are available for inspection in a public room is not sufficient basis, standing alone, to deny a fee waiver.

To give FOIA coordinators an idea of how courts and the Department have decided appeals involving denials of fee waivers for public room documents, following is a discussion of some of the cases decided in 1993 to 1995.

1. The Oregon District Court, in a decision issued April 22, 1994, ruled that a non-profit, public interest organization had failed to show that it satisfied the Department's criteria for granting a fee waiver in connection with the group's request for all of the BLM's active right-of-way files kept by BLM offices in Oregon, a request which totaled approximately 315,000 pages of documents. All of the documents were kept in BLM public rooms. The court ruled that in order to obtain a fee waiver for such a broad category of documents, a group must "specifically identify a public interest not already sufficiently served or capable of accomplishment under the status quo." The court ruled that, for purposes of showing entitlement to a fee waiver, it is

not sufficient that a group has an interest in various environmental issues. Oregon Natural Resources Council v. Bureau of Land Management, No. 92-6425-TC (D.Ore. April 22, 1994). The court remanded the case to the BLM to allow the group another opportunity to show it was entitled to a fee waiver for the records at issue in the lawsuit. BLM once again denied a fee waiver request. The Department, in a decision issued in April 1995, upheld the denial after concluding that the group had failed to submit sufficiently specific information to show it was entitled a fee waiver. Interior FOIA Appeal No. 94-199.

2. In a decision issued June 6, 1995, the Department determined that a public interest group in Colorado did not qualify for a fee waiver in connection with a request for documents kept in a BLM public room because the BLM had already given the group free copies of information containing the information sought. The fact that the BLM kept the documents available in a public room and had disseminated free copies of the information to persons on its mailing list, including the requester, justified BLM's denial of the request. Interior FOIA Appeal No. 93-160

3. In a series of decisions issued in April and May 1995, the Department concluded that while a public interest group had failed to show its entitlement to a fee waiver at the request level, the group demonstrated on appeal that it met the Department's criteria for granting a fee waiver even though the records, all of which pertained to grazing issues, were kept in a BLM public room. On appeal, the group submitted documents to show it had the ability and intention to disseminate the requested information, which totaled less than 2,000 pages of information per request, to the general public, thus satisfying its burden of showing disclosure would contribute to the understanding of the public at large. BLM further confirmed that, with the exception of making the documents available in its public rooms, it had not publicly disseminated the requested documents. The Department therefore concluded that disclosure of the information was likely to contribute significantly to public understanding of the BLM's grazing program. Interior FOIA Appeal Nos. 93-252, 94-223, and 95-008.

The pattern that emerges from these recent decisions is that the fact that BLM maintains requested documents in its public rooms is an insufficient basis, standing alone, for determining that release of documents will not contribute significantly to public understanding. Therefore, a fee waiver request may not be denied solely on the basis that the documents are available in a public room. On the other hand, the requester must show that he/she meets the criteria for receiving a fee waiver, i.e. that disclosure is in the public interest and not primarily to serve the requester's commercial interest. As the Oregon District Court ruled, the fact that a group is non-profit and operates in the public interest is insufficient, standing alone, to demonstrate the group's entitlement to a fee waiver. Further, if the BLM, in addition to maintaining information in a public room, has disseminated the requested information via other means, such as to persons on a mailing list or to libraries, then the fee waiver likely may be denied on the grounds that

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disclosure of free copies of the documents will not be likely to significantly contribute to public understanding of BLM's operations and activities.

**D. Fee Waiver and Information Available under 5 U.S.C. 552(a)(1) or (a)(2).**

Information listed in the Act (see also 43 CFR Part 2, Subpart A) under these cites are not covered under the FOIA, and therefore are subject to standard cost recovery, not FOIA fee rates, and fee waiver provisions. Such information would be charged according to BLM cost recovery procedures.

The following are some examples of information which are covered by this portion of the Act:

1. Substantive rule of general applicability adopted as authorized by law;
2. Statements of general policy; and
3. Administrative staff manuals and instructions to staff that affect a member of the public.

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CHAPTER 7 - FOIA APPEAL PROCESS**

**A. Introduction.**

Under the Department's regulations (43 CFR 2.18), requesters must file an administrative appeal with the Department when:

1. Records have been withheld either partially or entirely when a FOIA exemption applies (see sample language #20 and 21 in the Appendix of this Handbook);
2. A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located (See sample language #19);
3. A fee waiver request has been denied (see sample language #29) ; or
4. A decision on a request has not been communicated to the requester within the prescribed time limits (see sample language #9).

The initial denial letter must provide the requester with the proper procedures for filing a FOIA appeal according to 43 CFR 2.18 (see address change identified in sample language).

**B. FOIA Appeal Process.**

The Department of the Interior FOIA Appeals Officer will receive FOIA appeals from the FOIA requester, distribute copies of appeals to the Division of General Law, SOL-GL, for legal review and preparation of a legal opinion and recommendation (when information is being denied, or a fee waiver is denied); to the BLM FOIA Officer; and other appropriate offices in the Department. The BLM FOIA Officer or Coordinator will provide copies of the appeal to the appropriate BLM State Offices or field facilities.

The FOIA Appeal Officer may contact the Bureau FOIA Officer for additional information regarding the appeal, for copies of the documents withheld, for documentation of reasonable search of records, and explanations of fee waiver denial decision. If a statement of harm was not provided during the initial response process, then a request for such information may be requested for information withheld using a exemption requiring a sound grounds statement. The Bureau FOIA Officer or Coordinator will contact appropriate Bureau offices for requested information.

General Law will then review the information and provide a legal opinion to the Department's FOIA Appeals Officer. The Department then makes a final decision on the appeal.

A copy of the opinion and decision letter will be provided to the BLM FOIA Officer and the FOIA Officer or Coordinator will provide a copy to the appropriate BLM office.

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CHAPTER 7 - FOIA APPEAL PROCESS

In the final decision, the Department may instruct BLM to take action, such as releasing information originally withheld.

If the requester does not agree with the Department's decision, then the requester may file a lawsuit in Federal District Court. The United States Attorney's Office or the civil litigation staff at the Department of Justice will be assigned to represent the Department.

The decisions made by the Department and judges in court cases help to clarify FOIA requirements. For an annual summary of FOIA case law refer to The Department of Justice FOIA and Privacy Act Overview.

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APPENDIX 1

Sample Language Index

1. Clarification of a vague request
2. Clarification of an overly broad request
3. Fee waiver clarification
4. Request was transferred to another BLM facility
5. Request was transferred to another Interior Agency, or Government Department
6. Memo referring a FOIA to another BLM facility, or Government Agency
7. Referring records to another agency for review
8. Extension of a 10-day time limit
9. Delay in processing request
10. Disposition of a FOIA response
11. Request is being treated as a FOIA request
12. Another Government agency should not file a FOIA request
13. Sample language to requester to pay fees (When under \$250)
14. Sample language requesting advance payment (When payment was previously late)
15. Fees under \$15, and no payment is required
16. Costs exceed \$250 and prepayment is required
17. Reply to questions and creating new records



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APPENDIX 1

18. No record response (No records can be located)
19. Withholding records under a FOIA exemption when no harm statement applies
20. Sample language denying a fee waiver
21. Sample language to subject of a request for Privacy Act protected records
22. Sample language to a requester for Privacy Act protected records of another person
23. Multiple FOIAs are being aggregated and fees will be charged
24. Release of a database including a disclaimer statement
25. Withdrawal of a FOIA appeal

**Sample 1**  
Sample Language Requesting Clarification Of A  
Vague Request

Under Departmental regulations, 43 CFR 2.14(b)(2), the requester must describe the records in sufficient detail to enable an employee familiar with the subject area of the request to locate them with a reasonable amount of effort. Your request is too general in nature and this office is unable to identify what specific information you are seeking for a reasonable search as the regulation indicates.

Please be more specific concerning the records you are requesting. In addition, if such information is available, please state **(use applicable language)** the date, title or name, author, recipient, and subject matter of the record. Moreover, the geographical location and time frame for which you are seeking records have not been defined. It is unclear whether your request covers only records in this field installation or other Bureau offices.

Please contact the person below if you need more information on how this offices record system is organized, and what records we have which may help you. We will not proceed further with your request until we receive additional clarification from you. If you have any questions, please contact (name, FAX number & telephone number).

## Sample 2

### Sample Language Requesting Clarification of an Overly Broad Request

We have interpreted your request to mean ..... Because of the broad nature of the description of requested information possibly thousands of pages of documents might be applicable to your request. Below is an estimate of the costs of providing you with this information.

You may wish to contact this office's FOIA Coordinator at (phone number) to discuss what categories of information are covered by the subject of your FOIA in order to narrow your request, and reduce the estimated costs in reviewing and copying the above files for the responsive information. We will not proceed further with your request until we receive additional clarification from you.

### Sample 3

#### Sample Language Requesting Fee Waiver Clarification

In your letter you also sought a fee waiver, however your request did not provide enough information to make a determination on whether your request meets the twofold objectives for fee waivers established by the Department of Justice. Before we can make a decision on granting a fee waiver the following must be determined: Whether disclosure of the information is in the public interest because it (1) is likely to contribute significantly to public understanding of the operations or activities of the Government; and (2) is not primarily in the commercial interest of the requester (43 CFR 2.21(a)).

Please provide information in response to the following questions so that we can determine if granting the waiver or a reduction in fees is in the public interest: (1) In what way does the record requested concern the operations or activities of the Government?; (2) Is disclosure likely to contribute to public understanding of these operations and activities, and in what way do you have the knowledge and ability to disseminate the information to the public effectively?; and (3) Is there a commercial interest that would be furthered if the information were disclosed?

Our initial estimate is that fees for processing your request will be the following:

Total		
	<u>No. of Units</u>	<u>Unit Charges</u>
Document Search Time:		<u>Amount</u>
Clerical	40 hrs.@ \$ 2.30 1/4 hr.	\$640.00
Professional or		
Managerial	20 hrs.@ \$4.65 1/4 hr.	186.00
Duplication:	600 pages @ \$ .13/page	65.00
	Total:	<u>\$891.00</u>

If we determine from your response that a fee waiver is not justifiable, we will base your costs on your classifying as "other" FOIA fee category. We will continue processing your request when you have responded to the questions above. If you have any questions, please contact (name, FAX number & telephone number).

**Sample 4**

Sample Language Notifying The FOIA Requester  
That The Request Was Sent To Another BLM Facility

This office has reviewed its files and we are unable to locate any records responsive to your request.

The Bureau of Land Management has a decentralized FOIA program which means that each Bureau installation is responsible for responding to FOIA requests for documents under its control. Therefore, in accordance with the Department of the Interior regulations (43 CFR 2.15(a)) we are transferring your request to the \_\_\_\_\_ State Office at the address below for direct reply to you.

If you have any questions please contact \_\_\_\_\_ at (phone number and FAX number).

-----

**Sample 5**

Sample Language Notifying the FOIA Requester  
That the Request Was Sent to Another Interior Agency,  
or other Government Department

This office has reviewed its files and we are unable to locate any records responsive to your request.

We have determined that the records described in your letter may be located at the Forest Service of the Department of Agriculture. Therefore, we have forwarded your request to that Agency, which will provide you with a direct response. If you wish to contact the Bureau, the mailing address is:

(Name)  
FOIA Coordinator  
Rocky Mountain Region  
11177 W. 8th Avenue  
Lakewood, Colorado 80775  
(Phone Number)

Should you have any further questions please contact me at (phone number and FAX number).

**Sample 6**

Sample Memo Referring A FOIA

To Another BLM Facility or Government Agency

Memorandum

To: [BLM State FOIA Coordinator, or Government Agency]

From: [BLM FOIA Coordinator]

Subject: Transfer of Freedom of Information Act Request from (name)

Enclosed is a Freedom of Information Act request from (name) dated (date) who is requesting information which appears to be under the control of (name of BLM facility). This FOIA request is being transferred to your office for direct reply to the FOIA requester. We have contacted (FOIA requester) that they will receive a response directly from your office.

If you have any questions, please contact (name, FAX number & telephone number).

Enclosure

Sample 7

Sample Language Referring Records To Another Agency For Review

(Name)

FOIA Coordinator  
Office of Surface Mining  
Rm 130 South Interior Building  
Washington, D.C. 20240

Dear (Name):

While processing a Freedom of Information Act (FOIA) request from (name), dated (date) the Bureau of Land Management located three documents that originated in your agency. The three documents are: [Describe documents or list on a separate enclosure].

Enclosed are copies of those documents. We have advised (name) that they will receive a direct response from your office. If you have any questions, please contact (name, FAX number & telephone number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Enclosures



Sample 8

Sample Language For Extension Of 10-Day Time Limit

ADDRESS

Dear (Name) :

This is in response to your Freedom of Information Act (FOIA) request dated September 1, 1993 addressed to \_\_\_\_\_. You requested documents concerning mining activities in certain states.

**(USE THE FOLLOWING LANGUAGE FOR THE CIRCUMSTANCE THAT APPLIES):**

- I. "Since we must search for and collect documents from offices other than the office processing the request, we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(1))."
- II. "Since we must search for and collect voluminous documents, we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(2))."
- III. "Since we must coordinate and consult with our Field Office personnel [or Solicitor's Office] [or Bureau heads], we are taking a 10 working day extension of response time provided in the Department of the Interior FOIA procedures (43 CFR 2.17(c)(3))."

We will send a final reply to you on or before **(10 WORKING DAYS FOLLOWING THE FIRST DUE DATE)**.

Sincerely,

(Name)  
Freedom of Information  
Act Officer

Sample 9

Sample Language For Delay In Processing Request  
(When Request Exceeds The 20-Day Limit)

ADDRESS:

Dear (Name):

This is in regard to your Freedom of Information Act (FOIA) request of (date) addressed to (name of responsible office). You requested (subject of request). Your request was received by this office on (date).

**(SELECT ONE OF THE APPROPRIATE PARAGRAPH(S) BELOW):**

- o Because of the voluminous records that may be responsive to your request, additional time is necessary to enable us to determine which records or portions thereof should be provided. Accordingly, we anticipate a delay in providing you with our final response.
- o The requested documents have been retired to a Federal records center. We have asked that they be returned to us and will advise you when the material becomes available.
- o The records you requested are located at a number of our field offices and at headquarters. The (name of responsible office) will be coordinating the response since that office has jurisdiction over these records. As a result, we will need additional time to search for, collect, and review the material.
- o In accordance with 43 CFR 2.15(d), we are required to notify the submitter of material containing commercial and financial information when we receive a FOIA request for that material. The submitter has taken longer than anticipated to review the material. We expect to hear from them by (estimated date) and our response to your request will be forthcoming.

We expect to complete our response to you by (specify date). Under 43 CFR section 2.18, you have the right to appeal this response of your FOIA request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

**Sample 9**

Page 2

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) after the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "FREEDOM OF INFORMATION APPEAL" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

We regret the delay and appreciate your consideration in this matter. Should you have any additional questions, please contact (name, phone number, and telephone number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

**Sample 10**  
Sample Language Providing The  
Disposition Of A FOIA Response

ADDRESS

Dear (Name):

This is in regard to your Freedom of Information Act (FOIA) request of (date). Your request for information concerning complaints filed with the Joint Pipeline Office hotline was received (date). Your request is granted in part.

All names and personal identifiers and information which may identify individuals within these documents have been deleted in accordance with exemptions 6 and 7(C), as disclosure of such would constitute a clearly unwarranted invasion of personal privacy. Information directly related to any ongoing investigation being conducted by the Bureau of Land Management (BLM) on this issue, has been deleted in accordance with exemption 7(A) of the FOIA as release of these records could reasonably be expected to interfere with enforcement proceedings.

The following information is being withheld:

Names and personal identifiers are being deleted under exemption 6 and 7(C) of FOIA from memoranda, letters and notes from the files of BLM.

All information directly related to an ongoing investigation, is withheld under exemption 7(A) of FOIA from Memoranda, letters, and notes from the files of BLM.

The documents are presently being copied and the segregation of the information to be withheld under the FOIA exemptions as listed above is being completed. All releasable portion of documents will be sent to you as soon as possible.

You have sought a fee waiver for those documents requested, however, the fee incurred is less than \$15 and you will not be charged according to 43 CFR 2.20.

You have a right to appeal this partial denial with the Department. Your appeal should be in writing and should be addressed to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

**Sample 10**

**Page 2**

Your appeal must be in writing and received no later than 20 workdays (Saturdays, Sundays, and public legal holidays excepted) after the records have been made available. A copy of your original request and this denial letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

Freedom of Information  
Act Officer

Sample 11

Sample Language Indicating That The Request  
Is Being Treated As A FOIA

ADDRESS

Dear (Name):

This is in regard to your request of (date). You requested a copy of the Legal Land Description (LLD) data file pursuant to Civ. No. 89-3173(D.D.C., December 20, 1993). Your request was received on (date).

LLD data is classified as nonpublic by the Bureau of Land Management, and must be reviewed to determine if it is releasable under the FOIA. Enclosed is the information you requested with the following disclaimer:

"No warranty is made by the BLM as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data."

The cost of providing the documents enclosed is as follows: **(See sample with fee listing)**.

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Note:** In order to charge fees for responding to a request where the requester has not stated a willingness to pay fees or qualified for a fee waiver, the Bureau should halt processing of the request, and notify the requester of the fees involved and obtain their promise to pay the fees (43 CFR 2.20(g)).

**Sample 12**

Sample Language Indicating That Another Government Agency  
Should Not File a FOIA Request

This is in regard to your Freedom of Information Act (FOIA) request of (date). You requested Automated Lightning Detection Data on a monthly basis. A FOIA request can be made by "any person". The statute specifically excludes Federal agencies from the definition of a "person" (See Doyle v. United States Dep't of Justice, 494 F. Supp. 842, 843 (D.D.C. 1980)). Providing this information under the FOIA fee schedule is therefore not appropriate.

According to BLM Manual Section 1278, a data sharing agreement is the approved instrument when the fundamental purpose of the agreement is to purchase and exchange information between Federal entities when the information is requested more than once, and when no funds are involved. This office will be pleased to work with you in preparing such an agreement.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 13**

Sample Language To Requester To Pay Fees  
(When Under \$250)

The estimated fee for the documents you have requested is \$239.20 calculated as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4 hr.)	27.60
Duplication 100 pages	\$ .13/page	0
(The first 100 pages of copying costs are not charged)		

Total \$239.20

Prepayment is not requested at this time, however, please furnish a written assurance of your willingness to pay the full amount for the documents to (name of FOIA Coordinator). You may wish to modify your request to reduce the fee at this time. We will not start processing your request until this written assurance has been received.

Should you agree to the estimated fees, and desire to make payment now, please make your check payable to the Bureau of Land Management at the following address:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

To assist in identifying this payment, make reference on the check to FOIA Control No. \_\_\_\_\_. If you have any questions, please call (name), at (phone number and FAX number).



**Sample 14**  
Sample Language Requesting Advance Payment  
(When Previous Payments Were Delinquent)

ADDRESS

Dear (Name) :

This letter is in response to your Freedom of Information Act (FOIA) request of January 5, 1994, concerning (subject) addressed to (name). This office received your request on (date).

The estimated fee for the documents you have requested is \$239.20 calculated as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4hr.)	27.60
Duplication 100 pages	\$ .13/page	0
(The first 100 pages of copying costs are not charged)		
		Total \$239.20

Moreover, our records show that you owe a balance of \$150 on a previous request. Under the Department of the Interior's regulations (43 CFR 2.20(h)(2)), we will not begin processing your present request until these fees are paid in full.

Please send a check or money order made payable to the Bureau of Land Management at the address below. In the meantime, your request will be held until this matter is resolved.

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 15**

Sample Language When Fees Are Under \$15 And  
No Payment Is Required

We are providing the following documents in response to your request. Fees for providing these documents are less than \$15 and are not being charged in accordance with 43 CFR 2.20(a)(2).

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 16**  
Sample Language When Costs Exceed \$250 And  
Prepayment Is Requested

ADDRESS

Dear Mr. (Name):

This letter is in response to your Freedom of Information Act (FOIA) request dated (date) addressed to (name). You requested (subject).

Since you fall into the "other" fee category, we estimate that the fees to provide the requested information are as follows:

<u>Total No. of Units</u>	<u>Unit Charge</u>	<u>Total</u>
Search Time:		
Professional 6 hours	\$4.65 (for each 1/4/hr.)	111.60
(The first 2 hrs. of search time are not charged)		
Clerical 3 hours	\$2.30 ( for each 1/4hr.)	27.60
Duplication 100 pages	\$ .13/page	
0		
(The first 100 pages of copying costs are not charged)		
		Total
		\$239.20

In accordance with 43 CFR 2.20(h)(1), where it is anticipated that allowable fees are likely to exceed \$250 and the requester does not have a history of prompt payment of FOIA fees, the Bureau of Land Management may require the requester to make an advance payment. Please send a check or money order made payable to the Bureau of Land Management at the address below. In the meantime, your request will be held until we have been notified of your payment.

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

To assist in identifying this payment, make reference on the check to FOIA Control No. \_\_\_\_\_.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 17**

**Sample Language When Records Would Have To Be Created Or  
Reply To Questions Would Have To Be Provided**

ADDRESS

Dear Mr. (Name):

This letter is in response to your Freedom of Information Act (FOIA) request dated (date) addressed to (name). You requested on floppy diskette a list of awards given in the Bureau between 1990 and 1994 in each state office according to certain specifications. You also asked several questions concerning the awards program, and its management.

We have conferred with Bureau offices and were unable to locate any records responsive to your request in the format you requested.

The FOIA requires agencies to furnish copies of existing records only, and not provide information in reply to questions. Under 43 CFR 2.14(c), the Bureau is not required to create or compile a record to respond to a FOIA request. The Act applies only to records in existence at the time the request is made. Under 43 CFR section 2.18, you have the right to appeal this response by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and ensure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information

**Sample 18**  
**Sample Language For No Record Response**  
**(No Records Can Be Located)**

We have reviewed our files and were unable to locate any records responsive to your request. Under 43 CFR section 2.18, you have the right to appeal this response by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and ensure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 19**  
Sample Language Withholding Records Under FOIA Exemptions  
(When No "Harm Statement" Is Necessary)

ADDRESS

Dear (Name) :

This is in response to your Freedom of Information Act request of (date) addressed to (name). This office received your request on (date). You requested the location and production information for the last year concerning the Craig 1 E well.

Your request is being provided in part, and denied in part. We are releasing well location maps and well bore diagrams. The following documents are protected under FOIA exemption 4, as "trade secrets and commercial or financial information obtained from a person that is privileged or confidential": (1) Production logs dating from 1993 to 1994, and (2) geological studies around the well cite.

The person responsible for this partial denial (or denial- when all information is withheld) is [(name) and/or] the undersigned. Under 43 CFR section 2.18, you have the right to appeal this partial denial (or denial- when all information is withheld) of your FOIA request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of your original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this partial denial (or denial- when all information is withheld) is in error.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 20**

**Sample Language Denying A Fee Waiver  
(After Explanation By FOIA Requester Was Provided)**

In your request you also sought a fee waiver. The Department of the Interior regulations state that "..... documents shall be furnished without charge ...if disclosure of the information is in the public interest because it (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government, and (2) Is not primarily in the commercial interest of the requester." Your request did not contain sufficient evidence to explain why the information would likely contribute to an understanding of specific government operations or activities, and disclosure would contribute to the understanding of the public at large. Therefore, we are denying your request for a waiver pursuant to 43 CFR 2.21(a).

Under 43 CFR section 2.18, you have the right to appeal this denial to your fee waiver request by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and "Freedom of Information Act Appeal" should be marked both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this denial is in error.

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 21**  
Sample Language For Privacy Act Protected Records  
(To Person Who Is Subject Of File)

In your Freedom of Information Act request you requested any files which contain information of any kind on yourself which may be located anywhere within the Bureau of Land Management.

Because some of the information requested falls under a Privacy Act System of records, in order to release records that are protected by the Privacy Act, we must have a statement indicating that you are in fact (requester's name), and that you authorize release of your personnel records to you at the address indicated above.

Once we receive this information, you will be notified of the fees for copying the Privacy Act files, and fees incurred for providing you with the other information covered by your FOIA request, which will be calculated using the FOIA fee schedule.

If you have any questions, please call (name), at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer



**Sample 22**

**Sample Language To A Requester For  
Privacy Act Protected Records Of Another Person  
(Third Party Requester)**

You requested information on an employee's conduct investigation concerning at the District Office.

The information which you seek is maintained in the Employee Conduct Investigation File is a Privacy Act System of Records (LLM-20) and protected under the Privacy Act (5 U.S.C. 551a). The information is also withholdable under Exemption 6 of the Freedom of Information Act (FOIA), as it concerns "personnel and medical files and similar files; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Interior guidelines on the Privacy Act (43 CFR 2.56) require written consent of the individual to whom the records pertains before that record can be released except under exceptions designated in the 43 CFR 2.56(b) & (c). No documents can therefore be released at this time without that consent. Attached is an affidavit which will be required from the subject of the file to consent to release of the documents requested.

The person responsible for this denial **(or partial denial)** is [(name) and/or] the undersigned. Since this information is also withholdable under the FOIA, this is to notify you of your appeal rights by writing to:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240

Your appeal must be received within 20 working days (Saturdays, Sundays, and public legal holidays excepted) from the date of this letter. To expedite a response, your appeal should include a copy of our original request and a copy of this response, and write "Freedom of Information Act Appeal" both on the envelope and on the body of your appeal letter. In order to expedite the appellate process and insure full consideration of your appeal, your letter should also contain a brief statement of the reasons why you feel this response is in error.

Sample 22

Page 2

PRIVACY ACT STATEMENT: The purpose of this solicitation is to ensure that the records of individuals who are the subject of Bureau of Land Management systems of records are not wrongfully disseminated by the Bureau.

Pursuant to 5 U.S.C. 552a(b) I authorize the Bureau of Land Management to release any and all information relating to me to the following person:

(Name), (attorney or other designee).

I certify that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(I)(3) by a fine of not more than \$5,000.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Sample 23**

**Sample Language Notifying That The Multiple FOIAs  
Are Being Aggregated And Fees Will be Charged**

You requested information concerning the adoption of wild horse and burros. The State Office also received letters from you on April 3, 1994, May 5, 1994, and May 6, 1994 concerning the same subject.

According to Department of Interior regulations, where there is reasonable basis to conclude that a requester has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly under 43 CFR 2.20(a)(3).

Aggregating the fees charged for processing your requests, the cost of providing the documents enclosed is as follows: (See sample with fee listing)

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 24**

**Sample Language For Release Of Database  
Including Disclaimer Statements**

As indicated on the label on the tape being provided, the database you requested is being provided with the following disclaimer: **(Choose one of the three below depending on the record access category the system falls under)(also refer to Manual Section 1278):**

**Category 1** "No warranty is made by the Bureau of Land  
**or 2:** Management for use of the data for purposes not intended by BLM."

**Category 3:** "No warranty is made by the BLM as to the  
**(Unverified** accuracy, reliability, or completeness of  
**or Draft** these data for individual use or aggregate  
**Databases)** use with other data."

**\*\*\* (NOTE: DISCLAIMERS SHOULD BE MARKED ON EACH PAGE OF A COMPUTER PRINTOUT FROM A BLM DATABASE).**

The costs for providing this information are itemized below:

CPU Costs  
etc.

Please send a check or money order made payable to the Bureau of Land Management at the address below:

Bureau of Land Management  
BLM Address

**(FOR WASHINGTON OFFICE REQUESTS):**

Bureau of Land Management  
Denver Federal Center, SC-615  
P.O. Box 25047  
Denver, Colorado 80225-0047

If you have any questions, please call (name), at (phone number and FAX number).

**Sample 25**

Sample Language Following A Withdrawal  
Of A FOIA Appeal

ADDRESS

Dear (Name):

This is in regard to your February 5, 1994, Freedom of Information Act (FOIA) Appeal for non-response to your Freedom of Information Act request dated January 20, 1994. On February 2, 1994, this office informed you that the information you requested concerning a memorandum regarding increases in mining fees did not exist in this office.

Following your appeal you contacted the FOIA Coordinator at this office, and discussed other information which may satisfy your interest in this area. On February 10 you stated you would be satisfied with the information provided, and agreed to withdraw your appeal.

Accordingly, please provide the Department of the Interior FOIA Appeal Officer with a letter formally withdrawing your appeal, or contact him directly at the address below:

Freedom of Information Act Appeals Officer  
Office of the Assistant Secretary for Policy,  
Management and Budget  
U.S. Department of the Interior  
MS-5412, 1849 C. Street, N.W.  
Washington, D.C. 20240  
(202) 208-xxxx

If you have any questions, please contact (FOIA Coordinator) at (phone number and FAX number).

Sincerely,

(Name)  
Freedom of Information  
Act Officer

# **FREEDOM OF INFORMATION ACT HANDBOOK**

**( 383 DM 15 )**

**NOTE:** This handbook is not available electronically

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240  
February 10, 1999

In Reply Refer To:  
1270 (520)P  
Affects DW-96-4005  
& Change 1  
BLM Manual 1270-2

EMS TRANSMISSION 02/12/99  
Instruction Memorandum No. 99-063  
Expires: 9/30/00

To: All WO Office and Field Office Officials  
  
From: Assistant Director, Information Resources Management  
  
Subject: Cost Recovery Fee Schedule for Public

This Instruction Memorandum (IM) reissues the cost recovery fee schedule which expired on October 1, 1998, to provide field office Information Access Centers with current guidance on collecting costs for sales to members of the public. Office of Management and Budget (OMB) Circular A-130 permits Federal agencies to collect the actual costs for providing copies of information to members of the public. Consistent with OMB guidance, the Bureau of Land Management (BLM) has traditionally sold copies of records and information to members of the public.

Attached is the BLM Cost Recovery Fee Schedule. Please note that it does not include costs for copies of data and reports that will be generated from the land and resource information systems. Cost Recovery rates for these systems will be issued separately.

Although the BLM offices have attempted to standardize as much as possible, some offices may still have unique equipment and data. Circumstances can occur when a member of the public requests copies of information or data for which no fee is listed. When these unique situations occur, the State Records Administrator should develop an estimate of the costs involved. Please forward the suggested fee and justification to Wendy Spencer, Bureau Records Administrator for review. Recurring requests that are common to more than one office will be placed on an updated Cost Recovery Fee Schedule and distributed by a future IM.

If you have any questions about this IM, please contact Wendy Spencer at (303) 236-6642.

Signed by:  
Michael D. Nedd  
Acting Assistant Director  
Information Resources Management

Authenticated by:  
Robert M. Williams  
Directives, Records  
& Internet Group, W-O540

1 Attachment  
1- Cost Recovery Fee Schedule (7 pp)

### Cost Recovery Fee Schedule

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>STANDARD COPIES</b> 8 ½ x 11 up to 11 x 17	\$0.13/p on a copy machine	All paper copies, sized as shown, reproduced	Dept. Regulations Appendix A 43 CFR Part 2,
<b>COLOR COPIER COPIES</b>			
8 ½ x 11	\$0.20/p	All paper copies, sized as shown, reproduced on a color copier	Rates revised per figures from the Oregon State Office
8 ½ x 14	\$0.30/p		
11 x 17	\$0.40/p		
<b>NON-STANDARD SIZED COPIES</b> (Any size large on a copy machine than Standard copies) (i.e., copies from 2510 or 2520)	\$2.75/p	All paper copies, sized as shown, reproduced	
<b>XEROX 2080 or EQUIVALENT COPIES</b>	\$4.20/p	Paper copies produced by a Xerox 2080 or equivalent machine	
<b>FICHE COPIES (STANDARD/NON-STANDARD SIZED)</b>	\$1.10/p	All paper copies produced from micrographics reader/printer	
<b>MICROFILM AND APERTURE CARD COPIES</b>	\$1.10/p	All paper copies produced from micrographics reader/printer	
<b>FAX TRANSMISSIONS</b>	\$1.10/p + Research time + Any duplication fee	Documents sent via fax machine	



PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>RESEARCH</b> (for non-FOIA requests)	\$18.60/hr (Computer Professional)	Automated data compilation, manipulation, or searching Information Access Center \	
	\$ 8.40/hr (Clerical or IAC employee) \$ 0/under 1/4 hour	Total time taken to locate a record when such time exceeds 15 minutes (Charge by 15 minute increments)	
<b>SEARCH/REVIEW</b> (for FOIA Dept. requests)	\$18.60/hr \$ 9.20/hr	Professional Clerical	43 CFR Part 2 Appendix A Regulations
<b>APERTURE CARDS AND FICHE DUPLICATES</b>	\$.50/fiche	Duplicate Celluloid	
<b>MAPS (Published)</b>	Various Prices	Maps produced by other agencies	Includes USGS at their established price
<b>MAPS (Published)</b>	\$4/map	All other maps sold to the public	Will remain consistent with established USGS prices for sales to individuals
<b>O&amp;G SALES LIST/ GEOTHERMAL SALES LIST/ NONCOMPETITIVE LANDS AVAILABLE LIST</b>	\$10/Over 250 pages \$5/ up to 250	Paper copies of either Sales or Results list	Policy set forth by WO Fluid Mineral Div.
<b>O&amp;G RESULTS LIST GEOTHERMAL RESULTS LIST - COMP &amp; NONCOMP</b>	Free for one page. \$5 for more than one page		Rate for more than one page is base on BLM's experience
<b>PUBLICATIONS</b>	Actual Cost		
<b>INFORMATION ACCESS CENTER COMPUTER PRINTOUTS</b>	\$.75/p	Hard copy of print outs produced in the Information Access Center on printer from computer	<b>Only for</b> Case from Recordation, ORCA, Mining Claim Recordation online reports (i.e., Serial Register/Case Abstract Page) Note: See fee schedule for cost of copies from land and resource information systems

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>ALL PLOTTER</b>	\$7.50/ paper product  \$16/ mylar product  +\$8 Administrative fee rate	28 by 32 inch paper copy 28 by 32 inch mylar copy	Minimum rates based on BLM experience Subject to revision based on additional experience Rate added to paper and mylar products
<b>PATENTS</b>	\$15/per patent	Paper copy of Patent from bound volume at ESO only	
<b>CERTIFICATION OF RECORD</b>	\$.25/per certification		Set fourth in 43 U.S.C. 1460
<b>MAILING COSTS</b>	Actual Cost of postage plus cost of mailing container		Rates can be determined using Postal Service Rate Chart, "Postage Rates, Fees, and Information" + rates for mailing containers
<b>\$3 MINIMUM COLLECTION</b>	The \$3 minimum fee waiver is discretionary for mail, telephone, and fax requests.		
<b>AERIAL PHOTOGRAPHS, ORTHOPHOTO QUADS, AND 7.5 MINUTE QUADS</b>	The BLM will continue to coordinate with the USGS on the cost recovery rates for these products. The USGS rate for 7.5 Minute Quads is \$4 per quad.		

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>RETRIEVING INFORMATION</b>	The retrieval of information from one BLM office to another will be accomplished electronically. No fees will be collected for on-line retrieval at this time. Cost recovery rates will apply to copies requested by the public.		
<b>WEB SITE INFORMATION AND DATA BASES PROVIDED FOR THE PUBLIC</b>	No charge	Information and data bases, such as GCDB data or GIS data provided on web sites for the convenience of the public	Offices may elect to place publicly available data bases on web sites for free public viewing if more cost effective than handling traditional requests for information
<b>LAND AND RESOURCE INFORMATION SYSTEMS REPORTS</b>	See fee schedule for cost of copies from land and resource information systems		
<b>REQUESTS FOR DATA/ INFORMATION FROM MICROCOMPUTER</b>	\$8 Admin Fee + Research time (Personnel time required to process request at the automated data rate) + Cost of Floppy, Cassette, or CD-ROM + \$.13 per page (if provided in paper format)		

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>Rates for ADP Requests from PRIME Level A Computer, AIX, ARC/INFO on the SUN workstations</b>	\$8.00 Admin Fee +CPU and I/O for Prime only \$0.0019 per CPU seconds (equivalent to \$.11 per CPU minute) \$0.0027 per I/O second (equivalent to \$.16 per I/O minute) + Research Time (Personnel time required to process request at the automated data rate) + Cost of Cassette, Tape, Floppy disc, cassette tape, CD-Rom, and other media used to disseminate electronic information. + \$.13 per page for 8 1/2" X 11 up to 11" X 15" inch printouts. See plotter rates for plotter outputs. + Postage		
<b>Rates for Eastern States (ES) General Land Office Optical System (GLO)</b>			
GLO retrieval	\$2 cost/query session minute		
Fax Server			
	\$.13/p		
Paper (Same as Standard Copies)			
	\$.13/p		
<b>Rates for ADP Request from DPS 6+*</b>	\$8 Admin Fee + \$.04 per Kilobyte + Research Time (see Research Time above) + Cost of Cassette, Tape, or Floppy + Postage		
<b><u>Raw Data; No formatting</u></b>			

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>Rates for ADP Request from DPS 6+ <u>Data with Special Formatting</u></b>	\$8 Admin Fee + \$.08 per Kilobyte + Research Time (see Research Time above) + Cost of Cassette, Tape, or Floppy + Postage		
<b>Rates for ADP Request from DPS 6+ <u>Hard Copy Printouts</u></b>	\$8 Admin Fee + \$.04 per kilobyte + Research Time (see Research Time above) + \$.13 per page + Postage		
<b>Rates for DPS 8000* Batch Processing</b>	Processor time \$0.9657 /MINUTE Core memory\$0.0007 /K WORDS I/O channel time	\$0.0585 /MINUTE	
	Tape drives \$0.9722 /TAPE DRIVE Sysout: printer	\$0.0586 /K LINES	
	Sysout: punch \$2.8518 /K RECORDS Jobs	\$0.0000 /JOBS*	
<b>Time Sharing</b>	Connect time \$0.0417 /MINUTE Disk I/O	\$0.0000 /REQUEST*	
	Memory time \$0.0000 /BLK X MILLISEC/1K*		
	Transmission \$0.0000 /CHARACTER* Sessions	\$0.4728 /SESSION	

PRODUCT/SERVICE	CURRENT RATE	DESCRIPTION	COMMENTS
<b>DMIV-TP</b>	Physical I/O \$0.0003 /PHYSICAL I/O Transactions \$0.0046 /TRANSACTION Elapsed time \$0.6858/MINUTE		
<b>Communications</b>	Disk storage, on-line	\$0.0032 /LLINK USED/DAY	
	Disk storage, off-line	\$0.0000 /LLINK ALLOCATED*	
	Tape library, on-site	\$0.0000 /REEL *	
	Tape library, off-site	\$0.0000 /REEL *	
<b>Application Labor</b>	Operation & maintenance	\$22.6555 /HOUR	
	Development	\$46.6116 /HOUR	

**TABLE OF EQUIVALENTS**

Platform	Value	Bytes
DPS 6+	Sectors	256 Bytes
Prime	Record	2,048 Bytes
DPS 8000	Llink	1,280 Bytes
DPS 8000	Blink	76,800 Bytes
1,026 Bytes	1 Kilobyte	